The *Libri Feudorum* (the ‘Books of Fiefs’)

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John Hudson (*University of St Andrews*)



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# The *Libri Feudorum* (the 'Books of Fiefs')

## *An Annotated English Translation of the* Vulgata *Recension with Latin Text*

*By*

Attilio Stella

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LEIDEN | BOSTON

*To Chiara*

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# Contents

# Preface and Acknowledgements

The present book is the outcome of many years of research on the Lombard *Libri Feudorum*, of which it offers a working Latin text based on the principal and most widely used editions of the *Libri* and an up-to-date English translation. This book is not only for medieval historians or experts in medieval legal history already acquainted with this kind of source and terminology but also for an audience of students and non-specialists. Therefore, I decided to offer a broad introduction to guide readers through the making of the *Libri* and show their relevance to modern historiography. A glossary is also provided to facilitate the understanding of Lombard vernacularisms and clarify other problematic terms.

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# Abbreviations

| | |
|---|---|
| Ant. | *antiqua* recension of the *Libri feudorum* from K. Lehmann, *Das langobardisch*. |
| Bar. | Bartholmaeus Baraterius, *Libellus feudorum reformatus*. |
| BAV | Biblioteca apostolica vaticana. |
| Clyde | *The 'Jus Feudale' by Sir Thomas Craig*, ed. and trans. James Avon Clyde. |
| DBGI | *Dizionario biografico dei giuristi italiani*. |
| DBI | *Dizionario biografico degli italiani*. |
| DHJF | *Dictionnaire historique des juristes français. XIIe–XXe siècle*. |
| DuCange | *Glossarium mediae et infimae latinitatis* (Niort, 1883–1887). |
| Foramiti | *Corpo del diritto civile*, vol. iv (Venice: Antonelli, 1844). |
| MGH | *Monumenta Germaniae Historica*. |
| Niermeyer | *Mediae Latinitatis Lexicon Minus*. |
| RIS | *Rerum Italicarum Scriptores*. |
| Spruit-Chorus | *Libri Feudorum*, transl. Johannes E. Spruit, Jeroen M.J. Chorus (Dutch transl. based on V2). |
| V1 | *vulgata* recension of the *Libri feudorum* from K. Lehmann, *Das langobardisch*. |
| V2 | *vulgata* recension of the *Libri feudorum* from *Corpus iuris civilis*, ed. Osenbruggen. |
| V3, *glossa ordinaria* | *vulgata* recension of the *Libri feudorum* with the *glossa ordinaria* from *Institutiones Divi Caesaris Iustiniani* (Venetiis: s.e., 1574), repr. in M. Montorzi, *Diritto feudale*. |

## Manuscripts

| | |
|---|---|
| Par. | Paris, *Bibliothèque nationale de France*, lat. 4567. |
| Roma | Roma, *Archivio di Stato*, 1004. |
| Salz. | Salzburg, *Universitätsbibliothek*, M.III.98. |
| SG | Sankt Gallen, *Stiftsbibliothek*, 744. |
| Vat1 | Città del Vaticano, BAV, *Fondo Palatino latino*, 766. |
| Vat2 | Città del Vaticano, BAV, *Fondo Chigiano*, E.VII.211. |
| Vienna | Vienna, *Österreichische Nationalbibliothek*, Cod. 2094. |

CHAPTER 1

# The *Libri feudorum* in Modern Historiography

No lawbook has stirred up so broad a debate involving modern ideas of medieval society as has the *Libri feudorum* (the 'books of fiefs', hereafter LF). This is even more remarkable since until the 1990s the LF were part of the relatively narrow field of studies of the feudal law of Italy; the tracts that constituted the earliest known version of this collection were composed in Lombardy about 1100 and the collection was implemented and stabilised in northern Italy in the following one and half-centuries. After an initial period of irregular textual adjustments, in the mid-thirteenth century a standard version was established and eventually copied at the end of the new editions of Justinian's Novels, then known as the *Authenticum*. This step was pivotal, as it is the only example of a body of legal texts deeply anchored in local custom to be attached to the *Corpus iuris civilis*, against all the dogmas of the legal doctrine of the time, which saw in the immutability of the *Corpus* the cornerstone for its objective interpretation and thus for the very existence of law as a science. In this way, the book's content and its exegesis became extremely important for the creation of feudal law as a branch of Civil law and played a critical function in shaping modern notions of feudalism, over nine centuries of European history.

Seen today, the striking trajectory of these mostly customary texts would lend itself to the question of how a localised body of norms might relate to developments in society, politics, and law in the various contexts in which these norms were studied and discussed. Yet, a thorough debate over these matters, perhaps one of the most intense that medieval history has known in the past decades, had to wait until 1994, with the radical deconstruction proposed by Susan Reynolds in her famous book *Fiefs and Vassals. The Medieval Evidence Reinterpreted*. The book was explicitly inspired by Elizabeth Brown's provocative article, 'The Tyranny of a Construct' (1974), which conveyed the common 'unhappiness of historians with the terms "feudal" and "feudalism"' and outlined their implications, their contradictory definitions and uses.[1] According to Brown, after generations of inconsistent utilisation, the notion of feudalism had become overreaching, being too often unreflectively applied to medi-

1 Elizabeth A.R. Brown, 'The Tyranny of a Construct: Feudalism and Historians of Medieval Europe', *American Historical Review*, 79 (1974), 1063–1088.

 | DOI:10.1163/9789004529175_002

eval society as a whole—a critique that paved the path for Reynolds's broader deconstruction.

As Chris Wickham has outlined, historians generally refer to three models of feudalism, which can be seen as ideal types.[2] Firstly, the quite simple but very broad Marxian notion of feudalism as a 'mode of production' based on the hegemony of the landed aristocracy over a subject peasantry, an intermediate stage between slave-economy and capitalism in which the working class was allowed to own, or at least possess, some means of production—a broad notion that has mostly served attempts at comparisons on large-scale economic developments.[3] Then, there is the more complex type proposed by Marc Bloch in *La société féodale*, which defined feudalism as a social structure—more precisely, as a form of social cohesion—resting on at least six elements: (1) the subjection of the peasantry; (2) the broad diffusion of service tenements in the form of fiefs in place of salaries; (3) the hegemony of a class of specialised warriors; (4) the diffusion of ties of obedience and protection binding man to man, which within the warrior class assumed the form of vassalage, sealed through a ritual of homage and investiture; (5) the fragmentation of political powers; (6) despite the previous point, the survival of other types of association, such as kinship and the state.[4] This model distinguished between a first feudal age (c. 850–1050) when these distinctive elements would emerge in an inchoate form, and a second feudal age (c. 1050–1200) characterised by their fuller development, especially in the heartland of the Carolingian empire. Later scholars directly inspired by such model would reject Bloch's bipartition and insist on the emergence of feudalism only in the eleventh century, following the weakening of central powers and the rise of new forms of rural lordship and landed aristocracy.[5]

2 Chris J. Wickham, 'Le forme del feudalesimo', in *Il feudalesimo nell'alto medioevo* (Settimane di studio del Centro italiano di studi sull'alto medioevo, 47; Spoleto: CISAM, 2001), 15–46; Levi Roach, 'Feudalism', *International Encyclopedia of the Social & Behavioral Sciences*, 2nd edn., ed. James D. Wright (Oxford: Elsevier, 2015), 111–116. On the convergences between Bloch's epistemology and Max Weber's ideal-types: Otto G. Oexle, 'Marc Bloch et la critique de la raison historique', in *Marc Bloch aujourd'hui*, ed. Hartmut Atsma et André Burguière (Paris: Editions de l'EHESS, 1990), 419–433.

3 C. Wickham, *Land and Power: Studies in Italian and European Social History, 400–1200* (London: British School at Rome, 1994), 9–12; L. Roach, 'Feudalism', 112–113.

4 Marc Bloch, *La société féodale*, 2 vols. (Paris: Albin Michel, 1949), ii. 249–250.

5 Georges Duby, *La Société aux XIe et XIIe siècles dans la région mâconnaise* (Paris: Armand Colin, 1953); Jean-Pierre Poly, Eric Bournazel, *La mutation féodale (Xe–XIIe siècles)* (Nouvelle Clio, 16; Paris: PUF, 1980); Dominique Barthélemy, 'La mutation féodale a-t-elle eu lieu? (note critique)', *Annales. Économies, Sociétés, Civilisations*, 47/3 (1992), 767–777; Thomas N. Bisson, 'The "Feudal Revolution"', *Past & Present*, 142 (Feb. 1994), 6–42; Dominique Barthélemy and

The third, narrowest ideal type of feudalism, perhaps the most widely used one, was formulated by the Belgian legal historian François-Louis Ganshof in *Qu'est-ce que la féodalité?* (1944).[6] According to this model, feudalism would be an ensemble of institutions (homage, oath of fealty, investiture) sustaining and regulating the obligation of service from a free man, called 'vassal', towards another free man, the lord, and latter's promise of protection and maintenance of the former. This personal relationship is called 'vassalage'. On the other hand, the lord's obligation of maintenance takes very often the form of the grant of a 'fief'.[7] Heavily influenced by the German historian Heinrich Mitteis, who had recently reintegrated feudal law, traditionally relegated to the sphere of private law, as an integral part of European public law and state-making,[8] Ganshof used the feudo-vassalic institutions as analytical tools to assess the development of European states. In a methodologically questionable narrative, he traced the independent origins of vassalage and fiefs back to Merovingian forms of patronage and military clientele, between the Loire and the Rhine. In the ninth century, the Carolingians would incorporate the feudo-vassalic institutions as constitutional elements of the rising empire. However, only later, from the tenth to the thirteenth centuries, would the system of feudal institutions arrive 'at its completest development', through the reification of the fief and its definitive union with vassalage.[9] The 'classical age of feudalism' would be characterised by the loss of its primaeval uniformity, with diverse feudal laws emerging within different polities, but this did not dissuade Ganshof from elaborating some general principles of feudo-vassalic institutions, which allowed him to determine the development of feudalism in northern France, Germany, Burgundy, and England. Oddly enough, although he broadly relied on legal sources—such as *Glanvill*, *Bracton*, Beaumanoir, the *Établissements de Saint Louis*, the *Sachsenspiegel*—and although Italy had been part of the Carolingian empire, Ganshof thought that the Italian territory developed its own peculiar institutions, 'in which the Frankish contribution represented only a single element'; therefore, its feudalism had a character 'quite distinct from that which one meets elsewhere, and one cannot use, for the study of Western feudalism, various legal compilations put together in Lombardy in the

Stephen D. White, 'Debate. The "Feudal Revolution"', *Past & Present*, 152 (Aug. 1996), 196–223; Timothy Reuter and Chris J. Wickham, 'Debate. The "Feudal Revolution"', *Past & Present*, 155 (May 1997), 177–208; T. Bisson, 'Reply', *Past & Present*, 155 (May 1997), 208–225.

6 François-Louis Ganshof, *Feudalism*, trans. Philip Grierson, 3rd edn. (New York, 1961).

7 F.-L. Ganshof, *Feudalism*, xv–xviii.

8 Heinrich Mitteis, *Lehnrecht und Staatsgewalt. Untersuchungen zur mittelalterlichen Verfassungsgeschichte* (Weimar: Böhlau, 1933).

9 F.-L. Ganshof, *Feudalism*, 59–62.

twelfth century, even though they are concerned with feudal relationships and were known under such names as *Libri feudorum* or *Consuetudines feudorum*'.[10]

Elizabeth Brown was concerned with all models of feudalism, and her critique radically questioned their usefulness as interpretative tools for historical analysis, preparing the terrain for Susan Reynolds's work. Less concerned with the broader models, but convinced as Brown that none of them was applicable to medieval evidence, she moved her attack mainly against the Ganshofian model, the narrowest and most widely diffused among historians and thus, in her view, the most pernicious and difficult to eradicate. To that effect, Reynolds pushed the boundaries of Brown's arguments by deconstructing not only feudalism as a notion but also its building blocks, fief and vassalage. These two notions, at least in the meaning traditionally attached to them by historians, would not be medieval but post-medieval artefacts which from the early modern era onwards have been deceptively projected onto the Middle Ages as a whole.

To demonstrate the 'danger of starting from assumptions about the primacy of feudo-vassallic relations and then fitting the evidence to the assumption', she sketched how the origins of this distortion lay in early modern France, where influential legal historians such as Charles Dumoulin and François Hotman gave rise to the conviction that fiefs were a distinctive element of the Frankish empire—an idea that would persist up to Ganshof and beyond.[11] As I will try to show, according to Reynolds this interpretation was the outcome of a nationalistic effort to explain the glory of the early medieval past of France through notions derived from the LF and their exegetical literature, a view that quite strikingly stuck within the main European historiographies, spreading the belief that vassalage and fiefs, and of course feudalism, were born between the Loire and the Rhine.

This deconstruction of feudalism was very timely, as it can be contextualised within a broader trend of revisionisms concerning social and institutional change and continuity in the transition from late antiquity to the early Middle Ages, and despite initial scepticism, it won to Reynolds's cause many medievalists. On the other hand, her arguments that fief and vassalage were a by-product of a new law emerging from the twelfth century onwards, based on the LF and their exegesis, therefore not reflecting the customary norms that regu-

10 F.-L. Ganshof, *Feudalism*, 60.

11 Susan Reynolds, *Fiefs and Vassals. The Medieval Evidence Reinterpreted* (Oxford: Oxford University Press, 1994), 3–14; S. Reynolds, 'Afterthoughts on "Fiefs and Vassals"', in S. Reynolds, *The Middle Ages without Feudalism. Essays in Criticism and Comparison on the Medieval West* (Farnham, 2012), 1–15, cit. at 7.

lated property law in the high and late medieval period, received much colder acceptance, especially by legal historians.[12]

To whatever degree one may agree or disagree with one or more of Reynolds's stances, one must accept how influential *Fiefs and Vassals* has been in renewing a dormant historiographical debate, drawing attention to highly relevant interpretive problems. One of them, perhaps the most discussed, concerned the LF, according to Reynolds 'one of the most extraordinarily neglected texts of the middle ages'.[13] Indeed, just like Ganshof, until 1994 historians of feudalism paid very little attention to this work,[14] even though legal historians across Europe had never actually ceased to study it, albeit either as a source of the *ius commune* or as a piece of Lombard legislation. As a matter of fact, in the years preceding the release of *Fiefs and Vassals*, two fundamental essays were published: Peter Weimar's scrutiny of the formation of the LF and their *glossae* apparatus (1990) and Gérard Giordanengo's comprehensive overview of the exegetical literature based on the LF from the twelfth to the fifteenth centuries.[15]

The fact that most modern scholars failed to notice the importance that the LF might have had in shaping the models they were using has made this composite collection of local custom and imperial legislation attached to the *Corpus iuris civilis* a stimulating object of study in the past few years.

12 A sketch of the reception of Reynolds's theses is provided in chapter 3.3.

13 S. Reynolds, *Fiefs and Vassals*, 3.

14 A notable example is the absence of mentions of the LF in David Herlihy, *The History of Feudalism* (London, 1970), despite the fact that the book offers a translation of 'Frederick Barbarossa's constitution concerning fiefs' (237–239), issued in 1158, which in the thirteenth century was included in the LF (2.54).

15 Peter Weimar, 'Die Handschriften des "Liber feudorum" und seiner Glossen', *Rivista Internazionale di Diritto Comune*, 1 (1990), 31–98; Gérard Giordanengo, 'Les feudistes (XIIe–XVe s.)', in *El dret comú i Catalunya*, ii, ed. A. Iglesia Ferreirós (Barcelona: Fundació Noguera, 1992), 67–140.

CHAPTER 2

# The Formation of the *Libri feudorum* and Its Context

## 1 Before the *Libri feudorum*: Milan and Lombardy in the Eleventh Century

If studies of the LF's afterlife have increased relatively recently, what we know about the formation of the book derives from several reliable works—firstly thanks to German scholars such as Ernst A.T. Laspeyres, Karl Lehmann, Gerhard Dilcher, and Peter Weimar.[1] Conventionally, even if to some extent artificially considering the significant variations in the manuscript tradition, three versions or recensions of the LF are distinguished: a first one, called *antiqua*, included eight tracts written between c. 1100 and c. 1150; a second one, misleadingly called *ardizzoniana* after the jurist Iacobus de Ardizone, formed in the second half of the century mainly through the addition of material from Milanese judicial practice; a third one, the *vulgata*, towards the mid-thirteenth century, based on a version established by the renowned jurist Accursius, in which legislation by Lothair III and Frederick I was included.

The slow crystallisation of the LF, therefore, can be put in a European perspective, as private, non-official collections of regional customs appeared in Catalonia (the oldest core of the *Usatges*, late eleventh century), England (the so-called *Glanvill*, c. 1188), Normandy (the earliest texts of the *Très ancien coutumier*), and Saxony (Eike von Repgow's *Sachsenspiegel*, c. 1220–1234).[2]

1 Ernst A.T. Laspeyres, *Über die Entstehung und älteste Bearbeitung der Libri feudorum* (Berlin: Ferdinand Dümmler, 1830); Karl Lehmann, *Das Langobardische Lehnrecht* (*Handschriften, Textentwicklung, ältester Text und Vulgattext nebst den capitula extraordinaria*) (Gottingen: Dieterich, 1896); P. Weimar, 'Handschriften'; Gerhard Dilcher, 'Das lombardische Lehnrecht der *Libri Feudorum* im europäischen Kontext. Entstehung–zentrale Probleme–Wirkungen', in *Ausbildung und Verbreitung des Lehnwesens im Reich und in Italien im 12. und 13. Jahrhundert*, ed. Karl-Heinz Spieß (Vorträge und Forschungen, 76; Osfildern: Thorbecke, 2013), 41–91.

2 G. Giordanengo, 'Consuetudo constituta a domino rege. Coutumes rédigées et législation féodale. France, XIIe–XIIIe s.', in *El dret comu i Catalunya*, v, ed. A. Iglesia Ferreirós (Barcelona: Fundació Noguera, 1996), 51–79. On the difficult dating of this text: *The* Antiqua consuetudo Normannie, *or 'part one' of the so-called* Très Ancien Coutumier *of Normandy*, ed. and trans. William Eves (St Helier, Jersey, Channel Islands: Jersey and Guernsey Law Review, 2022),

What differentiated the earliest tracts of the LF from the contemporary collections was on the one hand the fact that they focused exclusively on fiefs, and not on the functioning of comital, ducal, or royal powers—no reference is made to local forms of government, even though the superior authority of the Roman-German emperor on feudal matters is recognised. On the other hand, these texts stemmed out of an older tradition of legal study, apparently stronger than anywhere else at the time.[3] Our point of departure to understand the birth of the LF is, therefore, the earlier context.

We are in eleventh-century Lombardy, the core of the Kingdom of Italy, subject to the Roman-German empire, and in its capital Pavia, once the seat of the royal palace—it was destroyed in 1024. This region, and Pavia in particular, knew the flourishing of the first known law school in the kingdom, the so-called school of the Lombardists, a milieu of law experts who in the first half of the eleventh century arranged a compilation known as *Liber legis Langobardorum* ('the book of the law of the Lombards'), then associated with Pavia and thus called *Liber Papiensis* ('the Pavian book'). The collection gathered together, in strictly chronological order, royal and imperial legislation concerning the kingdom enacted from 643 onwards—i.e., edicts of the Lombard kings, Carolingian capitularies, and later constitutions by Roman-German emperors.[4]

That these judges, in the second half of the century, used this collection not, or not just, as a reference book for court practice but also to train new generations of experts, is made clear from the commentaries on the *Liber Papiensis*, which we generally find in the form of *expositiones*—extensive glosses in the margins of the extant manuscripts.[5] These glosses expound the judicial procedure of the time and the mostly oral functioning of trials; perhaps more importantly, they also denote an analytical attitude towards these pieces of legislation, which the authors of these glosses question and compare to resolve

xlvi–lvi. On the codification of law in Western Europe, see: Emanuele Conte, Magnus Ryan, 'Codification in the Western Middle Ages', in *Diverging paths? The Shapes of Power and Institutions in Medieval Christendom and Islam*, ed. John G.H. Hudson, Ana María Rodríguez Lopez (Leiden: Brill, 2014), 75–97.

3 Charles M. Radding, *The Origins of Medieval Jurisprudence: Pavia and Bologna, 850–1150* (New Haven/London: Yale University Press, 1988); G. Giordanengo, 'Consuetudo', 51–54.

4 *Liber legis Langobardorum Papiensis dictus*, ed. Alfred Boretius (MGH, *Legum*, t. iv; Hannover, 1868), 289–585; Mario Ascheri, *The Laws of Medieval Italy (1000–1500). Foundations for a European Legal System* (Leiden: Brill, 2013), 40.

5 This is the case of the glosses by Walcausus (1055–1079): C.M. Radding, *Origins*, 95; C.M. Radding, '*Petre te appellat Martinus*. Eleventh-century judicial procedure as seen through the glosses of Walcausus', in *La giustizia nell'alto medioevo. Secoli IX–XI* (Settimane di studio del Centro italiano di studi sull'alto medioevo, 44; Spoleto: CISAM, 1997), 827–861.

their inconsistencies—an attitude that soon led to the systematisation of the *Liber Papiensis* in a new collection, called *Lombarda*, in which the same material was reorganised by subject to ease its consultation and use.[6]

This contextualisation is very important to us for at least two reasons. Firstly, it demonstrates that the earliest texts that would then constitute the LF did not come out of thin air but were produced in a fertile terrain for legal reasoning. Secondly, one of the imperial constitutions included in the *Lombarda*, enacted in 1037 by Emperor Conrad II, would be one of the foundational texts for the development of feudal law, the most obvious touchstone to which Lombard lawyers would compare local usages concerning fiefs and vassals.[7] To understand this constitution, which would provide authoritative legal grounds for relevant matters concerning fiefs such as succession, fair judgment, and right of appeal, it is necessary to understand the context in which the emperor decided to enact it.

After the post-Carolingian fragmentation of royal power in the kingdom of Italy, political authority had slipped into the hands of regional and local leaders, among whom bishops played a leading role.[8] By 1000 the archbishop of Milan had become the main public figure in his vast archdiocese, the ruler of a city that was by far the most important and powerful in Lombardy. The archepiscopal rule rested on the support of the local military elite, whose power relied on extensive estates and rights across the region, often held as archepiscopal grants, and who by the early twelfth century constituted the ruling class of the Milanese city commune.[9] The highest stratum of this military aristocracy was composed of about twenty families, called *capitanei*, whose origins have been debated but who, in the mid-eleventh century, possessed vast holdings, often including castles and jurisdictions, which were then consolidating into

6 This is the case of the *Expositio ad librum Papiensem* ('Explanation to the Pavian book'), a broad commentary to the *liber Papiensis*: M. Ascheri, *The Laws*, 41. On the *Expositio*: Giovanni Diurni, *L'*Expositio ad Librum Papiensem *e la scienza giuridica preirneriana* (Biblioteca della Rivista di storia del diritto italiano, 23; Rome: Fondazione Sergio Mochi Onory, 1976).

7 Hagen Keller, 'Das *Edictum de beneficiis* Konrads II. und die Entwicklung des Lehnswesens in der ersten Hälfte des 11. Jahrhunderts', in *Il feudalesimo*, 227–257; Piero Brancoli Busdraghi, *La formazione storica del feudo lombardo come diritto reale* (2nd edn., Testi Studi Strumenti, 15; Spoleto: CISAM, 1999).

8 *Formazione e strutture dei ceti dominanti nel medioevo: marchesi, conti e visconti nel regno italico (secc. XI–XII). Atti del primo convegno di Pisa (10–11 maggio 1983)*, ed. Amleto Spicciani (Rome: ISIME, 1988); Vito Fumagalli, 'Il potere civile dei vescovi italiani al tempo di Ottone I', in *I poteri temporali dei vescovi in Italia e in Germania nel medioevo. Atti della Settimana di studio (Trento, 13–18 settembre 1976)*, ed. Carlo Guido Mor (Bologna: il Mulino, 1979), 77–86; Luigi Provero, *L'Italia dei poteri locali. Secoli X–XII* (Rome: Carocci, 1998), 21–51.

9 Cinzio Violante, *La società milanese nell'età precomunale* (2nd edn., Rome/Bari: Laterza, 1974).

stable lordships.[10] Their tie to the archbishop was sealed through the grant of a 'benefice' (*beneficium*, later called *feudum*: fief), which constituted only part of their wealth and generally consisted in rural districts called *plebes* and the exaction of tithes. Indeed, the *capitanei* of Milan were considered so powerful that chroniclers described them as defenders rather than clients of the archbishops—who often themselves came from *capitaneal* families.[11] Below the *capitanei*, the lesser aristocracy was composed of a heterogeneous group of knights called *valvasores*, a social stratum of free men elevated to knighthood more recently, who emerged from the wealthy peasantry. The *valvasores* also held benefices, sometimes directly from the archbishop, more often as grants or sub-grants from the *capitanei*; in their case, however, fiefs were not just markers of status but in most cases the principal means of sustenance or political prestige, so that loss of the fief could risk throwing a *valvasor* into poverty, endangering a social hierarchy that was then being established.[12]

If fiefs came to be the main social markers of the Lombard elite, they also entailed duties towards the grantor. One of these duties, perhaps the principal one, was to support the archbishop when the emperor summoned the lay and ecclesiastical aristocracies of Italy, usually before his customary expeditions to Rome or, in exceptional circumstances, for military campaigns beyond the Alps. This support could consist in the actual provision of men and the payment of a tax, the imperial *fodrum*.[13]

In 1034, the Milanese archbishop, Aribert of Intimiano had led the Milanese army in support of Emperor Conrad II in a successful military cam-

10 Cinzio Violante stressed both the rural roots of the archepiscopal military clientele and the formation of the *capitaneal* class only from the late tenth century, mostly through enfeoffments to this clientele and part of the urban wealthy classes: C. Violante, *La società milanese*, 178–189. Hagen Keller, instead, has insisted on the long-standing wealth, political prestige, and direct bond with royal powers of the *capitanei*: Hagen Keller, *Adelsherrschaft und städtische Gesellschaft in Oberitalien: 9. bis 12. Jahrhundert* (Tubingen: Max Niemeyer, 1979), 197–250.

11 Landulphi senioris Mediolanensis, *Historiae libri quatuor*, ed. Alessandro Cutolo (RIS, iv/ii), 51: the *capitanei* were the defenders of the church ('tutamen ecclesie'), by whose power the archbishop Landulph da Carcano (d. 998) held his office ('quorum virtute archiepiscopatum teneret').

12 C. Violante, *La società milanese*, 178–189; H. Keller, *Adelsherrschaft*, 194–196.

13 If the grant of a 'benefice' was supposed to secure the provision of men to the imperial army, it has been noted how this link was far from being certain at the time: Giovanni Tabacco, *Gli orientamenti feudali dell'impero in Italia*, in *Structures féodales et féodalisme dans l'Occident méditerranéen* (*XE–XIIIE siècles*). *Bilan et perspectives de recherches. Colloque international* (*Rome, 10–13 octobre 1978*), ed. Konrad Eubel (Rome; École française de Rome, 1980), 219–240.

paign in Burgundy against Eudes of Champagne. Upon his return to Milan, he faced widespread discontent among the men who had accompanied him, whose rebellion spread soon to the whole kingdom. Chroniclers spoke indeed of seditions, armed uprisings, unprecedented confusion, and bloody battles, sometimes of a conspiracy of 'inferiores milites' against the 'iniqua dominatio' of 'superiores'—i.e., of *valvasores* against *capitanei*.[14] Although *valvasores* had started the revolt, its development was soon made more complex by the number of interested actors involved: the emperor, the archbishop, *capitanei*, and non-aristocratic citizens (the *populus*), each of these parties being liable to back or oppose one another depending on the contingent turn of events.[15]

Conrad repeatedly failed to pacify the rebellion and tried in vain to take Milan by storm. During that siege, on 28 May 1037, he promulgated an edict which would become known as *edictum de beneficiis* or *constitutio de feudis*.[16] The emperor acted apparently in great haste, as suggested by the unusual form of the document; he made general legal provisions concerning fair judgment, appeal, and heritability concerning the benefices held by both greater and lesser *valvasores*—i.e., respectively *capitanei* and *valvasores*.[17] No knight was to lose his benefice without a proven wrong being acknowledged by his peers; greater knights were granted the right to appeal to the imperial court, whilst lesser knights could appeal to imperial envoys. Furthermore, benefices could be inherited by a deceased knight's son or by his brother, if the benefice had been their father's, as long as greater knights continued to observe the customary gift of horses and arms to their lords. Finally, the emperor renounced the payment of the imperial *fodrum* for any newly built castle but confirmed the levy of this tax from the castles that had customarily paid it to his predecessors.

As Hagen Keller suggested, these provisions indicate on the one hand Conrad's apprehension concerning the difficult organisation of the imperial army in Italy and on the other one some of the reasons underlying the rebellion. Then, the knights holding 'benefices' of imperial or church land aimed at securing them by preventing the arbitrary judgment of lords—through judgment by peers and the right to appeal against them or the lord—and by receiving imperial acknowledgement of the heritability of benefices. Furthermore, the

14 C. Violante, *La società*, 233; H. Keller, 'Das Edictum', 239. According to Arnulf of Milan, the casus belli was the confiscation of the benefice of a 'certain powerful man', ('cuiusdam potentis'): Arnulfus Mediolanensis, *Liber gestorum recentium*, ed. Irene Scaravelli (Bologna: Zanichelli, 1996), 90.

15 For different perspectives on this conflict, see: H. Keller, 'Das Edictum'; P. Brancoli Busdraghi, *La formazione*, 72–93.

16 See *infra*: Appendix 3.

17 H. Keller, 'Das Edictum', 230–231.

exemption from imperial taxation accorded to new castles seems to favour those knights—or lords—who were consolidating new lordships in the Italian territory.[18]

Many aspects of the edict remain unclear: the provision, although enacted at the siege of Milan, is meant to be universal and is not addressed just to the Milanese or Lombard knights, which makes it difficult to understand if it was solicited by *capitanei*, *valvasores*, or both.[19] The most controversial point, however, is the extent to which the edict established new norms or confirmed a pre-existing custom. There is strong disagreement on this matter between historians, who tend to stress how it just corroborated practices that had already emerged in the late tenth century,[20] and legal historians, who instead tend to see in it the foundational act that caused the emergence of feudal law.[21] One could argue that the main divergence concerns the notion of custom: an established usage for the former, an enforceable right for the latter. Be that as it may, the importance of the edict lay in the fact that with this act the emperor provided a solid basis for the development of a separate procedure for controversies over fiefs, which was detached from the ordinary jurisdiction and was then tied to the imperial court.[22] It is no wonder that the edict soon became

18 H. Keller, 'Das Edictum', 245–249.

19 According to P. Brancoli Busdraghi, *La formazione*, 72–93, this edict was a political manoeuvre aimed at undermining the unity of the Milanese aristocracy by backing the claims of *valvasores* and lesser knights; a similar view is expounded by G. Dilcher, 'Das lombardische Lehnrecht', 52–62, who suggests that the edict would formally establish the inclusion of *valvasores* within the nobility. H. Keller, on the contrary, suggests that Conrad was principally addressing the greater knights by confirming their privileges, and that the inclusion of the lesser *valvasores* in the edict is just a collateral effect: see the discussion after P. Brancoli Busdraghi, 'Rapporti di vassallaggio e assegnazione in beneficio nel Regno italico anteriormente alla costituzione di Corrado II', in *Il feudalesimo*, 149–173, at 172–173.

20 H. Keller, *Adelsherrschaft*, 305; C. Violante, 'Fluidità del feudalesimo nel regno italico (secoli X e XI). Alternanze e compenetrazioni di forme giuridiche delle concessioni di terre ecclesiastiche ai laici', *Annali dell'Istituto storico italo-germanico in Trento*, 21 (1995), 11–39, at 19; François Menant, *Campagnes lombardes au Moyen Age. L'économie et la société rurales dans la région de Bergame, de Crémone et de Brescia du Xe au XIIIe siècles* (Rome: Ècole Française de Rome, 1993), 597–600.

21 According to Brancoli Busdraghi 'nothing in the content of the decree induces to think that its dispositions (…) were merely a confirmation of previously valid custom': my translation from P. Brancoli Busdraghi, *La formazione*, 77 112n. The opinion is the same as in: K. Lehmann, *Das Langobardische*, 158; M. Ascheri, *Istituzioni medievali. Una introduzione* (Bologna: il Mulino, 1994), 195; Ennio Cortese, *Il diritto nella storia medievale*, 2 vols. (Rome: Il cigno Galileo Galilei, 1995), i, *L'alto Medioevo*, 284. Susan Reynolds seems to accept this view: S. Reynolds, *Fiefs and Vassals*, 44, 192–207 (especially at 199, where she stresses the 'uncertainties of customary law in a fragmented kingdom').

22 G. Dilcher, 'Das lombardische Lehnrecht', 52.

part of the Lombard law collections and was subsequently used and analysed by generations of lawyers.

## 2 The Early Tracts (c. 1100–1136)

Conrad's edict was included in the *Liber Papiensis*, even though no *expositio* is available in the form of marginal commentaries.[23] The edict also appears in the *Lombarda*, which was put together in the late eleventh century. It has been argued that the earliest treatment of feudal law was contained in a *summa* on the *Lombarda* written about 1100 or slightly later, but recent studies have convincingly questioned both the authorship and the date of the commentary, which is more likely to be a product of the mid-twelfth century, or even later.[24] Nonetheless, such texts prove that the edict was used and analysed in the same milieu where the early tracts of the LF were written, so that it seems reasonable to conclude that the Lombard feudal law was at the beginning linked to the exegesis of the *Lombarda* but soon developed independently from it.[25]

The formation of the LF as a consistent collection began in the mid-twelfth century, with the uncertain and somehow incomplete stabilisation of a version of the book which historians refer to as *antiqua* after Ernst Laspeyres's work and Karl Lehmann's edition.[26] The *antiqua* is indeed transmitted in the manuscript tradition in versions that slightly differ from each other and that are not always

23 *Liber legis Langobardorum*, 583–584.

24 P. Weimar, 'Die legistische Literatur der Glossatorenzeit', in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, vol. i, *Mittelalter (1100–1500). Die gelehrten Rechte und die Gesetzgebung*, ed. Helmut Coing (Munich: C.H. Beck Verlag, 1973), 129–260, at 209. The *summula* is published in August Anschütz, *Die Lombarda-Commentare des Ariprand und Albertus. Ein Beitrag zur Geschichte des germanischen Rechts im zwölften Jahrhundert* (Heidelberg: Kessinger, 1855; repr. Frankfurt am Main, 1968), 194–197.

25 Magnus Ryan, 'Lombardist Glosses on Feudal Custom: Text, Gloss and *Usus Feudi*' in *Juristische Glossierungstechniken als Mittel rechtswissenschaftlicher Rationalisierungen. Erfahrungen aus dem europäischen Mittelalter—vor und neben den großen 'Glossae ordinariae'*, ed. Susanne Lepsius (Berlin: Erich Schmidt Verlag, 2022), 65–79.

26 E.A.T. Laspeyres, *Über die Entstehung*; K. Lehmann, *Das langobardische*; P. Weimar, 'Die Handschriften', 31–35. Having analysed all the manuscripts containing the *antiqua* and their differences, I agree with Gérard Giordanengo and Gigliola Di Renzo Villata's judgment about the artificiality of Lehmann's edition: G. Giordanengo, 'Les feudistes', 69; Gigliola Di Renzo Villata, 'La formazione dei *Libri feudorum*: tra pratica di giudici e scienza di dottori', in *Il feudalesimo*, 651–721, at 656–660. Nonetheless, the edition is still a fundamental point of reference for the study of the early tracts, and so is the subdivision in chapters it offers.

subdivided in titles as in the edition. It was a collection of eight tracts, six of which were written in the first decades of the twelfth century, or slightly earlier:

A Ant. I–II [= LF 1.1–6]
B Ant. III–V [= LF 1.7–12]
C1 Ant. IX [not included in the *vulgata*]
C2 VI.1–6 [= LF 1.13–17]
D Ant. VI.7–14 [= LF 1.18–23]
E Ant. VII [= LF 1.24–26]
F Ant. VIII [= LF 2.1–22, without LF 2.6–7pr., inserted only in the thirteenth century]
G Ant. X [= LF 2.23–24]

The earliest tracts (A–E) seem to have been produced in different areas of Lombardy: B (V.3 = LF 1.12) reports that the Milanese ('Mediolanenses') follow a different rule than the one stated by the author, who is therefore likely to be from another city. The author of C1 is a Pavian judge, Hugo de Gambolado, active in Pavia between 1099 and 1112.[27] E reports the Milanese usage on oaths as current (VII.4 = LF 1.25) and highlights divergences between the usage of Piacenza, where the investiture of a fief belonging to someone else was not deemed valid without the holder's consent, and those of Milan and Cremona, which allowed such transactions (VII.7 = LF 1.27.1). In light of all this, there is no reason to contradict Lehmann's hypothesis that these tracts were produced in Pavia, or under the direct influence of the Pavian school.[28]

Precise dating of these early tracts is more problematic. A mentions Pope Urban II (1088–1099), which can be taken as a reliable 'terminus non ante quem'. C1, by Hugo de Gambolado (the *capitula Hugonis*, 'Hugo's chapters'), was probably written in the first or second decade of the twelfth century, when the Pavian judge is documented. However, some doubts could be raised concerning C2: it has been assumed that it was a reworking of C1, most likely by a different author, but there is no substantial reason why one should not presume the reverse, as the use of the term *beneficium* for *feudum*, and *senior* for *dominus* in several passages of C2 suggests that Hugo in C1 used a more up-to-date vocabulary, and thus that his tract was perhaps later than C2.[29] As for D and E, their

27 Luca Loschiavo, 'Ugo di Gambolado', DBGI, 1993.

28 K. Lehmann, *Consuetudines feudorum: libri feudorum, jus feudale langobardorum* (Göttingen: Dieterich, 1892; repr. Aalen, 1971), 2–4; K. Lehmann, *Das Langobardische*, 76–78.

29 On the shift from *beneficium* to *feudum*: Anna Laura Budriesi Trombetti, 'Prime ricerche sul vocabolario feudale italiano', *Atti dell'Accademia bolognese delle scienze dell'Istituto di Bologna. Classe di scienze morali. Rendiconti*, 62 (1973–1974), 277–401, at 378–389. That C1 came after C2 would also explain its position in the *antiqua* as title IX, well after C2, which

silence on the legislation by Lothair III on the alienation of fiefs, enacted at the Diet of Roncaglia in 1136 and eventually inserted in the later versions of the LF, under title 2.52.1, seems a plausible reason for dating them before that year, since Lothair's constitutions forbade explicitly the sale of fiefs, whilst D ignores it when treating the reasons for which a fief ought to be lost.[30] In conclusion, these tracts were all probably written between c. 1100 and 1136.

## 3 Fiefs and Vassals at the Time of the *antiqua*

The texts of the *antiqua* tackled a variety of problems—how a fief could be acquired, maintained, and given away; who could succeed; on what grounds it could be lost; how controversies over fiefs were to be carried out and by whom, i.e. the lord, the vassal's peers, or other persons. Much importance was also bestowed upon the rituals of investiture and fealty, the nature and number of witnesses, proof and purgatory oaths, and the social boundaries within which feudal law applied—i.e., who was allowed to resort to this extra-ordinary procedure and on what terms.

To describe these features, as Gerhard Dilcher has outlined, the authors of these treatises chose expressions stressing the educational purpose of the

occupies chapters VI.1–6. The presence of C2 in a famous French Midi code copied and assembled in the second half of the twelfth century (ms. Troyes, *Bibliothèque Municipale*, 1317, fo. 71[rb]–71[va]) at the end of a treatise on succession based on excerpts from the *Authenticum* and the *Lombarda*, shows that the tract circulated independently about the time of its inclusion in the LF. On this famous manuscript and its content: Federico Patetta, *Il manoscritto 1317 della Biblioteca di Troyes* (Turin: Carlo Clausen, 1897).

30 Peter Classen sustained that this argument is not conclusive, as a treatise on emphyteutic contracts, written well after 1136 by the Milanese lawyer Anselminus de Orto, does not mention Lothair's constitution, which makes it plausible that the authors of the *antiqua* did the same: Peter Classen, *Studium und Gesellschaft im Mittelalter* (Schriften der Monumenta Gernaniae Historica, 29; Stuttgart: Anton Hiersemann, 1982), 64–65. Of the same opinion is S. Reynolds, *Fiefs and Vassals*, 486. However, Anselminus's treatise deals with emphyteusis, *precaria*, and other types of land conveyance descrbed as *investitura*—by which Anselminus does not mean 'feudal grant': Anselminus de Orto, *Super contractibus emphyteosis et precarii et libelli atque investiturae*, ed. Rudolf Jacobi (Weimar: Typis Boehlavianis, 1854). For other types of non-feudal *investitura* in Milan and Lombardy see at least Antonio Padoa Schioppa, *Aspetti della giustizia milanese dal X al XII secolo*, in *Atti dell'11° Congresso internazionale di studi sull'alto medioevo* (*Milano, 26–30 ottobre 1987*), 2 vols. (Spoleto: CISAM, 1989), i, 459–549, at 486–498. The silence on Lothair's decrees, which regulated fiefs alone—more specifically, those fiefs which entailed the provision of military aid to the imperial army—in a tract about private contracts would seem more than reasonable.

texts ('let us see', 'it must be noted'), often proposing hypothetical situations ('If someone …'), with the speaker sometimes representing himself as a party in a court case. Therefore, these tracts aimed to elucidate their subjects in a clear and accessible manner for students.[31] The basis of this didactical material was not just the old 1037 edict, but the practice developed in the different *curie*, or signorial courts, where fiefs were granted to cement a lord's clientele: an important aspect of the most politically relevant *curie* was that they had formed mainly around bishops and great prelates residing in the main cities of Lombardy. Although fief-giving followed some shared basic rules, each *curia* had to some extent developed its own distinctive tracts, local usages part of which is reflected in the *antiqua*.[32]

Another relevant element of these tracts is their lexical evolution, a phenomenon that is noticeable also in archival sources: the word *feudum* was used ever more often in place of *beneficium*, which retained a more general meaning, and the word *vasallus* came to indicate any fief-holder—a broader term than *miles* ('knight'), which in the LF indicates a noble fief-holder owing military service.[33] Beyond these lexical shifts towards greater definition, other changes were in progress, both legal and social, as Piero Brancoli Busdraghi has outlined concerning the notion of 'fief'. In his view, until the eleventh century, *beneficia* (or *feuda*) would be nothing more than wages or gifts granted by powerful men to reward past services or obtain new ones; these 'benefices' were very often pecuniary or in-kind revenues from land already held by unfree peasants or free tenants, who would consequently pay to the benefice-holder part of the due rents. Therefore, the link of fiefs to the land would at that point be mostly indirect. The shift Brancoli Busdraghi portrayed was towards a new conception of fiefs in terms of property rights (*ius in re*), which was possible only when these 'gifts' had become mainly land grants—a tendency that he found mostly for fiefs granted to knights for military service.[34]

Although Brancoli Busdraghi's work is the most comprehensive account of such developments and has been generally welcomed by scholars, his views have been criticised by Susan Reynolds and Giovanni Tabacco. Reynolds stressed that until c. 1100 grants of fiefs did not convey property rights and that such a view relied 'on the use of … anachronistic legal concepts and ignored evidence that does not fit'; only in the twelfth century, with the emergence of

31 Dilcher, 'Das lombardische Lehnrecht', 50.
32 Dilcher, 'Das lombardische Lehnrecht', 47–50.
33 A.L. Budriesi Trombetti, 'Prime ricerche'.
34 P. Brancoli Busdraghi, *La formazione*.

professional lawyers, would more precise legal categories apply to a previously inconsistent property law framework.[35] Giovanni Tabacco, while sharing several points of Brancoli Busdraghi's reconstruction, contended that the processes described therein were not just legal, as they were signs of social change and had paramount consequences on the sphere of politics.[36]

Such intertwining of legal and social phenomena brings us back to the tight relationship between the LF and twelfth-century Milanese practice. Not only are their contacts confirmed by the high number of passages of the LF that survived in Milanese custom, as appears from the *Liber consuetudinum Mediolani*, the 'book of customs of Milan' codified in 1216.[37] This relationship appears even more clearly from Lombard archival evidence, which shows how the LF provide precious information on both social practice and political developments in Milan and Lombardy.[38] There, fiefs could range from entire rural districts, castles, and tithes to land revenues or even small farms; service requested in the grant of a fief could involve military support, political cooperation and loyalty, castle-guard or armed escort, manual labour or even the humblest farm work. Such variety reflects the idea that both the nature of a fief and the personal tie sealed with its grant depended on the relative status of the parties—it could be an act of benevolence or authority of a lord towards a subject, as much as an agreement between two persons of equal rank.[39] Mutual expectations were therefore very important and could often change the shape of contextual relations that were sustained by feudal grants; this aspect could well explain why the LF remained vague on the matter of service or the substance of fiefs, aiming rather at providing a flexible framework with which different social

35 S. Reynolds, *Fiefs and Vassals*, 194–198.

36 G. Tabacco, 'Fiefs et seigneurie dans l'Italie communale. L'évolution d'un theme historiographique', *Le Moyen Age*, 75 (1969), 5–37, 203–238. Tabacco also suggested that these processes were not just Italian and urged further comparison with France and Germany, where he believed one could identify similar patterns.

37 *Liber consuetudinum Mediolani anni 1216*, ed. Enrico Besta, Gian Luigi Barni (Milan: Giuffrè, 1949), 119–132 (ch. 24–27); Alberto Spataro, 'Ein unbekannter Brief Innocenz' III. betreffend den deutschen Thronstreit und die Entstehung des *Liber consuetudinum Mediolani* von 1216', *Mitteilungen des Instituts für Österreichische Geschichtsforschung*, 127 (2019), 407–418, at 413–415. There are at least forty-five textual convergences with the LF: H. Keller, 'Die Kodifizierung des Mailänder Gewohnheitsrechts in ihrem gesellschaftlich-institutionellen Kontext', in *Atti dell'11° Congresso internazionale di studi sull'alto medioevo* (*Milano, 26–30 ottobre 1987*), 2 vols. (Spoleto: CISAM, 1989), i, 145–171.

38 G. Di Renzo Villata, 'La formazione'; Attilio Stella, 'Bringing the feudal law back home: social practice and the law of fiefs in Italy and Provence (1100–1250)', *Journal of Medieval History*, 46 (2020), 396–418.

39 A. Stella, 'Bringing', 400–407.

realities could be framed.[40] Of course, one should not expect the legal obligations expressed in the LF to reflect social practice: on the contrary, the actors involved in the exchange of fiefs seemed to be constantly on the verge of evading those stipulations when they sensed personal advantage—an attitude that seems to be widespread not just in Lombardy.[41] Further to that, as Tabacco pointed out, one should not overestimate the public nature of fiefs and the predominance of military service, as Conrad's edict concerned only imperial or ecclesiastical land traditionally bound to such provision, and did not consider other kinds of fiefs.[42]

In conclusion, whatever the nature of fiefs, their strategical use, and the relative status of lords and vassals, by the time the early tracts of the LF were written the bulk of these customary grants had become, or were about to become, enforceable rights for most holders. In light of these phenomena, Brancoli Busdraghi's idea that the privileges held by the most powerful holders would be sought after by the ones who were excluded from them looks correct.[43] Gerhard Dilcher, following Hagen Keller, sees in this process the establishment of a strictly 'feudal hierarchy', formed in the first place by *capitanei* and then by *valvasores*, who acquired a knightly status in the eleventh century; in the twelfth century, he suggests, a progressive closure of this military aristocracy, characterised by fief-holding, took place so as to limit attempts by lesser (or less ancient) fief-holders at accessing the privileges concerning security of possession and fair judgment.[44] Obertus de Orto, the author of the two last tracts of the *antiqua*, implied that to prove their noble status fief-holders had to demonstrate the antiquity of their fiefs (LF 2.10). Although one may argue against this view that the LF provided a solid legal basis for the claims of lesser holders, it is undoubted that the focus of the *antiqua* is pointed principally towards the Lombard *capitanei* and *valvasores*. It is true that in the Kingdom of Italy social and political practice was not then shaped solely or even primarily by feudal notions, which were only one among various alternatives to conceptual-

40 M. Ryan, 'Ius commune feudorum in the Thirteenth Century', in *'Colendo iustitiam et iura condendo': Federico II legislatore del regno di Sicilia nell'Europa del duecento*, ed. Andrea Romano (Rome: De Luca Editori d'Arte, 1997), 51–65, at 51–56.

41 Christoph Dartmann, 'Lehnsbeziehungen im kommunalen Italien des 11. und 12. Jahrhunderts', in *Ausbildung und Verbreitung*, 105–132.

42 G. Tabacco, 'Fiefs et seigneurie'.

43 P. Brancoli Busdraghi, *La formazione*, 93–96.

44 G. Dilcher, 'Das lombardische Lehnrecht', 53–62; at 55–56 the author expresses the difficulties in pinpointing with clarity these phenomena in twelfth-century Lombardy and Milan.

ize social facts, and not necessarily the most important one.[45] It is nonetheless beyond doubt that in Milan the military aristocracy whose status was sanctioned by fief-holding not only owned or held sizeable estates and jurisdictions within and outside the boundaries of the city's *contado* but constituted the core of the archepiscopal *curia* and soon ended up forming the backbone of the early civic government. Fief-holding might not have been the only way to seal political alliance or patronage even in this specific context but was certainly one of the most politically relevant ones.

## 4 The Romanisation of the Fief: Obertus de Orto and the *antiqua*

The civic government that in the first decades of the twelfth century stemmed from the archepiscopal *curia* did not include just knights, but also legal experts (*iudices* or *causidici*) some of whom came from knightly families, some others from the class of free citizens (the *populus*). Indeed, the first consular governments which were renewed every year included members of the three principal social classes—*capitanei*, *valvasores*, *cives*.[46] The framing of fiefs as *iura in re*, enforceable rights, which Brancoli Busdraghi connected to an alleged decline of the personal elements of feudal relationships, especially service, all the more often subject to contractual agreements, took place in parallel with this process of institutionalisation.

The legal development of fiefs, therefore, cannot be considered separately from its political and institutional context, in particular from the need to frame any right within the forms of legal actions that the Italian civic courts were then deriving from Roman law. If this problem was not seemingly expressed by the authors of the first tracts of the LF, it had become compelling towards the mid-twelfth century.[47] A central figure to analyse such developments is Obertus de Orto, a judge, politician and imperial representative (*missus*) documented in Milan in 1140–1174 and active well beyond Lombardy.[48] The fact that Obertus

45 C. Dartmann, 'Lehnsbeziehungen'.

46 H. Keller, *Adelsherrschaft*, 386–401.

47 A. Padoa Schioppa, 'Il ruolo della cultura giuridica in alcuni atti giudiziari italiani dei secoli XI e XII', *Nuova Rivista storica*, 64 (1980), 265–289; A. Padoa Schioppa, 'Aspetti', 503–549; A. Stella, 'Bringing'.

48 For a biographic and bibliographic profile, see: Giancarlo Andenna, 'Dall'Orto, Oberto', DBI, 32 (1986), 145–150; Luca Loschiavo, 'Oberto dall'Orto', DBGI, 1448–1449. For Obertus's activity as a jurist and legal practitioner: G. Di Renzo Villata, 'La formazione', 662–683; Giovanni Rossi, 'Oberto Dall'Orto "multarum legum doctus auctoritate" e le origini della feudistica', in *Il secolo XII: la "renovatio" dell'Europa cristiana*, ed. Giles Constable, Gior-

wrote the last two tracts of the *antiqua* (F–G) induced later scholars, starting from the thirteenth century, to think that he compiled that collection, which was misleadingly called *obertina* even when it became clear that Obertus had nothing to do with it.[49]

These two tracts were both seemingly composed shortly after 1150 and are written in the form of letters addressed to his son Anselminus, who is portrayed as a law student, presumably at Bologna, where feudal law was not taught. The main purpose of Obertus was to define the Milanese custom of fiefs by updating the earlier texts, whose heterogeneous and disorganised material needed to be systematised and conceptualised. Obertus's texts, indeed, denote greater precision in definitions than their predecessors and a more methodical approach—each subject is developed consistently and more thoroughly. Local practice and Lombard law, in particular Conrad's 1037 edict, were the main sources for tracts A–E. With Obertus this approach began to change. At the outset of the first letter, he revealed a very sceptical attitude towards Roman law and its scant usefulness in disputes over fiefs.[50] Indeed, Obertus suggested that these controversies were to be resolved through customs that differed from region to region and from court to court, leaving to Lombard and Roman law, i.e. the 'written laws', a subsidiary function (LF 2.1). Despite his scepticism, Obertus's knowledge and utilisation of notions derived from Roman law to frame some key features of fief-holding show how a Romanisation of the fief was then taking place.[51] This change was to some extent necessary since the judicial system of Milan—as in most Italian city communes—relied ever more extensively on categories derived from the *Corpus iuris civilis*, especially the theory of legal actions expounded in the Institutes (Inst. 4.6). As Dilcher showed, the outcome of this encounter of feudal custom with Roman law reveals a general sense of unease and incompatibility: Obertus fluctuated indeed quite uncertainly between *possessio*, *ususfructus*, and *dominium* to describe the legal position of a fief-holder, and only later doctrine, starting from Pillius de Medicina, developed the notion of *dominium utile*, to grant holders a factual and enforceable real right over fiefs without hindering the legal position of lords, described as *dominium directum*, within a conceptualisation known as *duplex dominium* ('double ownership').[52]

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gio Cracco, Hagen Keller, Diego Quaglioni (Annali dell'Istituto storico italo-germanico in Trento. Quaderni, 62; Bologna: il Mulino, 2003), 329–365.

49 P. Weimar, 'Die Handschriften', 32–35.

50 G. Dilcher, 'Das lombardische Lehnrecht', 84.

51 P. Brancoli Busdraghi, 'Le origini del concetto di feudo come istituto giuridico', *Melanges de l'École française de Rome. Moyen-Age*, 114 (2002), 955–968.

52 G. Dilcher, 'Das lombardische Lehnrecht', 84–85; Emanuele Conte, 'Modena 1182, The Ori-

At one point, Obertus made a 'clumsy attempt to qualify the fief as a usufruct (in the Roman law sense) perpetual and transmissible to descendants';[53] but in another chapter he set out in more precise terms an effort to frame the right of a fief-holder within the new judicial procedures, in a passage of paramount importance for later conceptualisations of *duplex dominium*: a vassal who has been rightly invested with a benefice may 'quasi-vindicate' it from any possessor as if he were its owner; if he is sued by another person on account of that same thing, he may mount a defence against him (LF 2.8.1). By 'quasi-vindicate' (*quasi vindicare*) Obertus referred to a legal action called *rei vindicatio* which allowed full owners to recover their property against anyone; therefore, according to fief-holders this action, he implied that a fief could be defended in court as if it were full property, equating thus a holder's right with that of a full owner. In some way, Obertus was implicitly anticipating a fundamental feature of the *duplex dominium* defined by Pillius in the 1180s.

If this problematic legal framing of fiefs aimed at embedding feudal custom within property law categories and their forms of legal actions adopted in the civic court, it might be surprising that no mentions of the city commune or its institutions are to be found in the LF. Furthermore, whilst at the outset of the LF the archbishop is named first among those who can grant fiefs, in Obertus's writings his figure disappears, even though the definition of *capitanei* is still implicitly anchored to archepiscopal fiefs—they are described as holders of *plebes*, i.e. ecclesiastical districts comprising several parish churches, which represented the jurisdictional cells of local power under the archepiscopal rule. This silence may be explained—following Dilcher—on the one hand by the fact that the LF depicted extra-ordinary procedures within the framework of the empire, and by doing so was mostly concerned with *capitanei* and *valvasores* and their relation to the higher ranks of the realm rather than to the civic government. On the other hand, the feudal law, in so far as it was the law

gins of a New Paradigm of Ownership. The Interface Between Historical Contingency and the Scholarly Invention of Legal Categories', *GLOSSAE. European Journal of Legal History*, 15 (2018), 4–18. Robert Feenstra published a series of fundamental contributions on this subject: Robert Feenstra, 'Les origines du *dominium utile* chez les glossateurs (avec une appendice concernant l'opinion des *ultramontani*)', in R. Feenstra, *Fata iuris romani. Etudes d'histoire du droit* (Leiden: Presse Universitaire de Leyde, 1974; 1st edn. 1971), 215–259; R. Feenstra, '*Dominium* and *ius in re aliena*. The Origins of a Civil Law Distinction', in R. Feenstra, *Legal Scholarship and Doctrines of Private Law, 13th–18th Centuries* (London: Ashgate, 1996; 1st edn. 1989), 111–122; R. Feenstra, '*Dominium utile est chimaera*? Nouvelles réflexions sur le concept de propriété dans le droit savant (à propos d'un ouvrage récent)', *Tijdschrift voor Rechtsgeschiedenis*, 66 (1998), 381–397.

53 My translation from P. Brancoli Busdraghi, 'Le origini', 966.

protecting a military aristocracy that was intimately involved with the civic government, was not perceived as an issue and, on the contrary, was an integral part of the civic legal system.[54] This point looks indeed correct if one considers the entrenchment of feudal law, mostly derived from the LF, and the Milanese customs recorded in 1216.[55]

## 5 The Intermediate Recension Known as *ardizzoniana*

The early tracts constituting the *antiqua* underwent several stages of textual augmentation and sedimentation in the second half of the twelfth century. This stage of codification, traditionally called *ardizzoniana*, offers an even more complex picture. For a start, this conventional name derives from the wrong belief that Iacobus de Ardizone had based his *Summa feudorum* on this recension in the 1230s, but it is today known that he was using a different version of the LF, which he had reshaped, and that the recension *ardizzoniana* was available decades before Ardizone was born.[56]

This heterogeneous stage of codification is characterised by a series of extensions which in the *vulgata* would amount to LF 2.25–51, with the *capitula Hugonis* (C1) keeping their place between LF 2.22 and 2.23, and with 2.6 and 2.7pr. still missing. Although this recension seemingly stabilised in the last decades of the twelfth century, the seventeen manuscripts bearing it offer editions that combine features of both the *antiqua* and the *vulgata*, which can be viewed as either late versions of the former or transitional versions towards the latter. All these manuscripts also bear the so-called *extravagantes*, chapters that were copied after the text proper, without a specific order—the term itself means 'wandering outside', referring to their erratic occurrence. It is worth noting that these *extravagantes*, a distinctive mark of the intermediate versions, included already all the material that was eventually integrated into the *vulgata*. I now try briefly to sketch the evolution of this recension following, for the sake of simplicity, the subdivision in titles and chapters used in Lehmann's edition of the *vulgata*.

54 G. Dilcher, 'Das lombardische Lehnrecht', 80–82.

55 H. Keller, 'Die Kodifizierung'.

56 P. Weimar, 'Die Handschriften', 35–46; Emil Seckel, 'Quellenfunde zum lombardischen Lehenrecht, insbesondere zu den Extravaganten-Sammlungen', in *Festgabe der Berliner juristischen Fakultät für Otto Gierke*, 3 vols. (Breslau: M. & H. Marcus, 1910), i, 47–168; A. Stella, 'The *Liber Ardizonis*. Reshaping the *Libri Feudorum* in the Thirteenth Century', *Studi Medievali*, 58 (2017), 175–227, at 181–192.

The added material, excluding 2.27 (Frederick I's constitution *De pace tenenda*, 1152), points straight at Milanese practice: much of it is reported in the form of *consilia* ('legal briefs') or opinions by Obertus and other Milanese lawmen, such as Gerardus Cagapistus and Stephanardus, or other unnamed *sapientes* (lit. 'wise men', i.e. the consuls or high officers of the civic government).[57] The most evident feature of this material (LF 2.25–26, 2.28–51) is indeed its practice-oriented approach: it addresses an audience of practitioners, providing opinions or examples through a very dry and direct language, as opposed to the much more elaborate style of Obertus. In his reconstruction, Laspeyres thought that LF 2.25–26 were the first texts to be added to the *antiqua* mainly because they come before 2.27 (which Laspeyres believed to date to 1155),[58] but there is no other substantial evidence for this. He also thought that LF 2.28–49 were a consistent set of titles produced by the same author: expressions such as 'quod supra diximus' ('what we have said above') seem to prove him right—for instance, 2.45 contains a cross-reference to 2.28.3; 2.46 refers to 2.34.1.[59] Finally, the last three titles (2.49–51) look like notes or *quaestiones*, but there is no reason to believe that they came from the same hand or that they were added at the same time as the previous titles.

If the addition of these titles reinforced the localised nature of the LF, the *extravagantes* on the contrary opened the text to a much broader context. Most of them were imperial constitutions: some would find their way to the *vulgata* (LF 2.52 I–III, 2.53, 2.54, 2.55, 2.56), whilst some would not as, for instance, Conrad's 1037 edict, the peace of Constance (1183), the constitutions enacted by Frederick II at his crowning in 1220. Two of these *extravagantes* titles regarded fealty: the first is the *epistola Philiberti* (LF 2.6), a letter that Bishop Fulbert of Chartres addressed to Duke William V of Aquitaine early in the eleventh century, and later included in Gratian's *Decretum*, which would become a standard model for oaths of fealty; the second is a customary oath known as 'the new form of the oath of fealty' (LF 2.7pr.).[60] Finally, there were some learned commentaries, possibly glosses to the text proper, some of which were incorporated

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57 G. Di Renzo Villata, 'La formazione', 683–693. As several opinions by Gerardus Cagapistus are reported (LF 2.25, 28, 30, 32, 34, 36, and 51), he was eventually thought to be the original compiler of the LF: Gigliola Soldi Rondinini, 'Cagapesto, Gerardo', DBI, 16 (1973), 279–282.

58 *Constitutiones et acta publica imperatorum et regum*, ed. Ludewicus Wieland, t. i (MGH, Legum, s. iv; Hannover, 1893), 194–198 (n. 140); *Friderici I. Diplomata*, ed. Heinrich Appelt (MGH, Diplomata regum et imperatorum Germaniae, x; Hannover, 1975), i (1152–1158), 39–44 (n. 25): 1152 July/August, Ulm.

59 E.A.T. Laspeyres, *Über die Entstehung*, 203–217.

60 G. Giordanengo, 'Epistola Philiberti. Notes sur l'influence du droit féodal savant dans la pratique du Dauphiné medieval', *Mélanges d'archéologie et d'histoire*, 82 (1970), 809–853.

in the *vulgata* (LF 2.57), whilst others were excluded, becoming part of a separate collection called *capitula extraordinaria* ('supplementary chapters').

Peter Weimar has unveiled all the recurring patterns in the occurrence of *extravagantes* in the surviving manuscripts of the LF, which in some cases were copied in consistent sets in the same order as they appear in the *vulgata*. If in some cases these affinities may reveal further steps towards the new recension, in many others they can be more likely seen as signs of the influence of the *vulgata* on manuscripts bearing older versions of the LF—several manuscripts of the intermediate recension carry indeed later glosses.[61] This is not surprising as when the *vulgata* was established at Bologna after a version approved by Accursius (c. 1250), its success was not immediate and alternative reshaped versions (*reconcinnationes*, 'recompilations'), most of which had been put together before the establishment of the *vulgata*, continued to circulate.[62]

The fact that the owners of these manuscripts, many of which date to the thirteenth century, thought it useful to copy additional material at the end of the text proper, and that some jurists and professors thought it convenient to reshape the texts sedimented in that book, which was not organised by subject, stand as proof of its increasing success. Even more importantly, this success was no longer limited to Lombardy: already in c. 1180 a Bolognese professor, Pillius de Medicina, had written a short treatise on the book which he used for teaching at a new law school founded in Modena. In the following years, he produced the first known apparatus of glosses to the LF, bringing that compilation to the attention of other learned jurists.[63] This was a momentous passage in the history of the book. For the first time, the interpretive techniques that the Bolognese dogma had reserved for the ancient, authoritative Justinianic Corpus were applied to a present-day customary law collection, which was not yet

61 P. Weimar, 'Die Handschriften', 36–42, and the synoptic table at 98.

62 E. Seckel, 'Quellenfunde'; A. Stella, 'The *Liber Ardizonis*'; A. Stella, 'The *Summa Feudorum* of MS Parm. 1227: a Work by Iacobus Aurelianus (1250ca.)?', *Reti Medievali Rivista*, 20/2 (2019), 271–327.

63 The *summa* is available in a recast version that, according to E. Seckel, 'Über neuere Editionen juristischer Schriften aus dem Mittelalter', *Zeitschrift der Savigny-Stifiung für Rechtsgeschichte, Röm. Abt.*, 21 (1900), 212–338, at 255–271, was written by Iacobus Columbi, but that according to P. Weimar, 'Die Handschriften', was a reworking by Accursius. In the most recent edition, the reworked *summa* was mistakenly attributed to Hugolinus Presbiteri: Hugolinus, *Summa super usibus feudorum*, ed. Giovanni Battista Palmieri (Bibliotheca juridica medii aevi, ii; Bologna, 1892), 181–194. Pillius's apparatus was edited based on a Roman manuscript in: Antonio Rota, *L'apparato di Pillio alle* Consuetudines feudorum *e il ms. 1004 dell'Arch. di Stato di Roma* (Bologna: Cooperativa tipografica Mareggiani, 1938).

stabilised and, more importantly, had not been enacted by imperial authority but put together by private lawyers. It is no wonder that this bold passage was not carried out in Bologna, but in a new *studium*, by a jurist who had not spared the Bolognese professors harsh critiques.[64]

## 6 The Accursian Recension and the *vulgata*

The path towards the *vulgata*, therefore, was not a linear one, and Pillius's apparatus was perhaps the most important step, which bestowed authority upon one specific version of the LF, presumably making it more practical for later interpreters to rely on it. The *vulgata*, indeed, as reflected in the principal modern editions, including Lehmann's, would eventually result from an extension of that version based on systematisation of the extravagant material: LF 2.6 and 2.7pr. on the oath of fealty, imperial constitutions by Lothair III and Frederick I (2.52–56), and the so-called *notae feudorum*, short commentaries on the LF (2.57). The *capitula Hugonis* (C1 in the *antiqua*) were omitted—probably because the compilers saw them as a repetition of C2, which instead kept its original place—and the subdivision into two books became a stable feature.

This transition towards a standardised version was mainly due to the interest showed by the great Accursius, the most influential law professor at Bologna.[65] In a stage which Peter Weimar calls *proto-vulgata*, Accursius glossed all the material that would find its way to the *vulgata*, even though it was seemingly still outside the text proper, perhaps at the end of it.[66] The *proto-vulgata*, therefore, was not yet a standardised text. Weimar then identified a second stage, which he recognised as the 'Accursian recension', which included the *capitula Hugonis*—missing in the *proto-vulgata*—and the constitution issued by Frederick II upon his coronation, in 1220, with a solemn introduction and a final confirmation by Pope Honorius III.[67] Eventually, the *vulgata* recension developed independently of the Accursian recension through the definitive

64 E. Conte, 'Modena'; E. Cortese, *Il diritto*, ii, *Il basso Medioevo*, 145–174.

65 Giovanna Morelli, 'Accursio (Accorso)', DBGI, 6–9.

66 P. Weimar, 'Die Handschriften', 46–48. The author suggests that in ms. Vaticano, *BAV*, Vat. lat. 3980, fo. $38^{vb}$–$39^{rb}$, the Accursian glosses to LF 2.6–7pr. are copied between his glosses to 2.56 and 2.57. This would prove that Accursius had originally commented on a text that had this material in a different order than the *vulgata*. A further step of the *proto-vulgata* would be reflected in ms. Vienna, *Österreichische Nationalbibliothek*, Cvpl. 2094, as outlined in E. Seckel, 'Quellenfunde', 71, as well as in mss. Venezia, *Biblioteca Nazionale Marciana*, Lat. V. 119 and Oxford, *New College*, 174.

67 P. Weimar, 'Die Handschriften', 49–53.

exclusion of the *capitula Hugonis*, whereas Frederick II's coronation constitution—which does not appear in the principal modern editions of the LF—is reported in a shorter version which lacks the solemn *intitulatio* and the closing confirmation by the pope.[68] This recension, implemented with the apparatus of glosses systematised by Accursius, started being copied in the new editions of the *Corpus iuris civilis* as the tenth *collatio* ('collection') of the *Authenticum*—the high medieval name given to Justinian's Novels until then subdivided into nine books.

One cannot stress enough how fundamental the establishment of an apparatus of glosses was for the crystallisation of the *vulgata*.[69] Accursius was at the time carrying out the monumental operation of normalising the apparatus of the entire *Corpus iuris civilis*: he selected, implemented, and systematised marginal commentaries that had been produced since the early twelfth century and had since been used in law schools for the exegesis of the Justinianic texts, thus to adapt this authoritative, yet ancient source to the concrete needs of the time. By the early thirteenth century, the study of these glosses had superseded the direct analysis of the texts themselves, but the increasing stratification of commentaries, often anonymous or signed with just an initial, could impede the proper interpretation of the text. The systematisation carried out by Accursius over years of patient work aimed to put a remedy to the inconsistencies due to this alluvial stratification and resulted in the selection and reordering of more than 96,000 glosses in a new apparatus, which would soon be known as *glossa ordinaria*, the official commentary and teaching tool adopted in Bologna, the apotheosis of the glossatorial method.[70]

The systematisation of the glosses to the LF was the last effort by Accursius in this direction, the prelude to a *glossa ordinaria feudorum* and the subsequent inclusion of the LF in the *Authenticum*. In this way, a group of texts originally rooted in eleventh- and twelfth-century Lombard custom had in little more than one century become an authoritative source of the *ius commune*. This trajectory was revolutionary: it was against all dogmas of the Bologna school to

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68 P. Weimar, 'Die Handschriften', 53–67. The constitution begins with the words 'Ad decus' and ends with the words 'nichilominus puniendus'.

69 Ugo Gualazzini, 'I "Libri feudorum" e il contributo di Accursio alla loro sistemazione e alla loro Glossa', in *Atti del Convegno internazionale di studi accursiani* (*Bologna, 21–26 ottobre 1963*), ed. Guido Rossi, 3 vols. (Milan: Giuffrè, 1968), ii, 577–596.

70 Guido Astuti, 'La glossa accursiana', in *Atti del Convegno internazionale di studi accursiani* (*Bologna, 21–26 ottobre 1963*), 3 vols. (Milan: Giuffrè, 1968), ii, 289–379; Giovanni Diurni, 'La glossa accursiana: stato della questione', *Rivista di storia del diritto italiano*, 64 (1991), 341–367.

quote or mention texts that did not belong to the ancient Justinianic corpus, whose prestige and validity rested mainly on imperial authority.

A further element must be stressed: crossing the boundaries of local custom went hand in hand with the inclusion of imperial legislation which claimed universal legal validity. This inclusion is important for at least two reasons: because it bestowed upon the entire collection the aura of imperial law and because it helped bridge the divide between local custom and the doctrines taught in the law schools.

What is more remarkable, this legislation did not necessarily treat feudal matters. The *Landfrieden* ('territorial peace') of 1152 (LF 2.27), the first constitution to find its way into the LF, touches on controversies over benefices only in three paragraphs (§§ 8, 9, 17); furthermore, it was issued by Frederick I when he was crowned king of Germany and therefore is not, technically, an imperial act.[71] Frederick I's *Landfrieden* issued at Roncaglia in 1158 (LF 2.53) does not even mention fiefs, and neither does the famous definition of regalian rights provided in the same Diet (LF 2.55) nor the so-called 'three lost laws of Roncaglia' (1158), which were issued together with the latter but were eventually excluded from the *vulgata*.[72]

The two most important constitutions concerning fiefs are those of Lothair III (1136: LF 2.52.1) and Frederick I (1158: LF 2.54) prohibiting the alienation of fiefs. Both emperors faced problems similar to those confronted by Conrad II in 1037, but they sought completely different remedies. While Conrad had tried to secure the military service due to the empire by granting privileges to fief-holders, Lothair and Frederick issued strict rules to limit unlawful transfers of fiefs, for which holders refused to provide the customary service due to their lords and the royal army. The second of these constitutions, in particular, enjoyed widespread success in the later legal tradition since it is often cited as proof for the legitimation of the LF under imperial law, helping thus to reinforce the idea that feudal law developed within the framework of the empire.[73]

71 The fact that the opening of the constitution describes Frederick as emperor has been deemed an interpolation by the compilers of the LF, who transmitted the only known copy of this document: *Constitutiones*, i, 194.

72 Vittore Colorni, *Le tre leggi perdute di Roncaglia (1158) ritrovate in un manoscritto parigino (Bibl. Nat. Cod. Lat. 4677)* (Milan: Giuffrè, 1967). In particular the *lex Omnis iurisdictio* regulated the relationship between the emperor, portrayed as the supreme source of jurisdiction, and a kingdom of Italy characterised by the increasing liberties of the city communes: G. Dilcher, 'Das lombardische Lehnrecht', 62–67, 82–84.

73 M. Ryan, 'Zur Tradition des langobardischen Lehnrechts', in *Gli inizi del diritto pubblico, 2. Da Federico Barbarossa a Federico II [= Die Anfänge des öffentlichen Rechts, 2, Von Friedrich*

## 7 The *capitula extraordinaria*

The establishment of the *vulgata* did not entail the immediate extinction of the *extravagantes* that were left outside of the text proper. I have mentioned the existence of some thirteenth-century *reconcinnationes* or recompilations of the LF, alternative versions which eventually were superseded by the *vulgata*, even though some of them were still known and occasionally used in the following centuries. Virtually nothing is known of the *reconcinnationes* by Symon Vicentinus and Iacobus de Aurelianis,[74] but we do know that the *reconcinnatio* by the Bolognese jurist Odofredus Denari was a reordering by subject of a *proto-vulgata* recension, which did not alter its content but just the chapter order.[75] More interesting for its influence on later traditions is the *reconcinnatio* by Iacobus de Ardizone, also known as *liber Ardizonis*, a vast extension of an intermediate recension that included all the extravagant material that would eventually find a place in the *vulgata*.[76]

This extension did not alter substantially the content of the text proper—only LF 2.27, Frederick I's *Landfrieden* of 1152, was moved from its original place to a new section devoted solely to imperial legislation. Instead, it collected and systematised an enormous mass of material in a series of new titles which Ardizone attached at the end of the text proper. A preliminary systematisation was concluded in the late 1220s, after which Ardizone went on gathering any piece of legislation that in his opinion could help improve the range of sources for the study and teaching of feudal law. He selected almost two-hundred chapters, derived from Gratian's *Decretum*, papal decretals, imperial legislation, the *Lombarda* (with both Lombard edicts and Carolingian capitularies), the statutes of Verona, his native city, and, more importantly, some

*Barbarossa zu Friedrich II.*], ed. Gerhard Dilcher, Diego Quaglioni (Annali dell'Istituto storico italo-germanico in Trento. Contributi, 21; Bologna: il Mulino, 2009), 225–245, at 230–243.

74 E. Seckel, 'Quellenfunde', 61–62, 64–65, had already noted the presence of some 'additiones' by and references to Iacobus de Aurelianis in ms. Vienna, ONB, 2094; after a first-hand scrutiny of that manuscript, I outlined some preliminary hypotheses on the *reconcinnatio* by this largely unknown author: A. Stella, 'The Summa feudorum'. The manuscript, however, also offers evidence for a partial reconstruction of Symon Vicentinus's *reconcinnatio*.

75 E. Seckel, 'Quellenfunde', 66–68; P. Weimar, 'Die Handschriften', 68–69.

76 On Iacobus's life and works: Federico Roggero, 'Iacopo di Ardizzone', DBGI, 1101; Gian Maria Varanini, Attilio Stella, 'Scenari veronesi per la *Summa feudorum* di Iacopo di Ardizzone da Broilo', in *Honos alit artes. Studi per il settantesimo compleanno di Mario Ascheri*, ed. Paola Maffei, Gian Maria Varanini, 4 vols.; iv: *La formazione del diritto comune* (Florence: Firenze University Press, 2014), 266–280.

anonymous tracts and commentaries on fiefs which he inserted in the title *De capitulis extraordinariis et alterius compilacionis feudorum* ('Concerning supplementary chapters on fiefs and those of another collection').[77]

Thanks to Emil Seckel's works, we know that this title was originally composed of three sets of chapters.[78] The first set would soon find its way into the *vulgata* as LF 2.57.[79] The second one[80] was probably circulating as an autonomous tract in the early thirteenth century: Ardizone quoted some of these chapters in his *Summa feudorum*, but Lehmann, who inserted them in an appendix to his edition of the *vulgata*, derived them from a much later collection, the *Libellus reformatus* by Bartholomeus Baraterius (1442), and attributed them to him (*Capitula extraordinaria Baraterii*).[81] The third set,[82] through a largely unknown path, was inserted in the sixteenth-century printed editions of Ardizone's *summa* as the first part of a larger batch (which in his *summa* occupies chapters 149–150) which Lehmann published in the appendix of the *vulgata* as the *capitula extraordinaria Iacobi de Ardizone*.[83]

However difficult the reconstruction of this tradition may be, the *liber Ardizonis* and these chapters, in particular, are a reminder that the establishment of the *vulgata* did not entail the immediate obliteration of other versions of the LF, with their respective augmentations. About 1260, perhaps slightly earlier, the Provençal lawyer Iohannes Blancus in his *Summa feudorum* did not rely on the *vulgata* and saw it as convenient to insert at the end of the treatise a sort of correlation table of the different versions he knew.[84] In the same period, the enigmatic author of a *summa* on the LF, once thought to be the Orleanais jurist Jacques de Revigny, but who is perhaps identifiable with Iacobus de Aurelianis,

77 This encyclopaedic effort resulted in a voluminous collection of which no manuscript survives but which can be derived from ms. Vienna, ONB, 2094: E. Seckel, 'Quellenfunde'; A. Stella, 'The *Liber Ardizonis*'. The contents of this title would be cited by later scholars relying on either Ardizone's *reconcinnatio* or a tradition stemming directly from it: V. Colorni, *Le tre leggi*.

78 E. Seckel, 'Quellenfunde', 74–79; see also A. Stella, 'The Liber Ardizonis', 200–205, 216–217.

79 Extr. I. 1–11 in Seckel's reconstruction.

80 Extr. I. 12–22.

81 See *infra*, Appendix 2. K. Lehmann, *Langobardische*, 199–200.

82 Extr. I. 23–54.

83 See *infra*, Appendix 1. Iacobus de Ardizone, *Summa super usibus feudorum* (Astae, 1518), fo. 35$^{ra}$–36$^{va}$; K. Lehmann, *Langobardische*, 186–198; whilst E. Seckel deems the third set (Extr. I. 23–54) as spurious, mainly on the basis that Ardizone does not quote these texts in his *summa*, I suggested that it can be nonetheless attributed to him in Stella, 'The *Liber Ardizonis*', 200–204.

84 G. Giordanengo, 'La littérature juridique féodale', in *Le vassal, le fief et l'écrit*, ed. Jean-François Nieus (Louvain-la-Neuve: Université Catholique de Louvain, 2007), 11–34, at 14.

had at hand these titles of the *liber Ardizonis*, which he cited in his treatise and possibly implemented in his *reconcinnatio*.[85] The tradition originating from the *liber Ardizonis* can be traced until the late fourteenth century, when the great jurist Baldus de Ubaldis, in his *Lectura super usibus feudorum*, although relying on a *vulgata*, also used its extravagant collections.[86] Furthermore, in the fifteenth century other *reconcinnationes* were composed, e.g. by Antonius Mincuccius, in six books (1428), and the above-mentioned Bartholomeus Baraterius (1442),[87] followed one century later by Jacques Cujas, who reorganised the text proper and a considerable amount of extravagant material in five books (*De feudis libri quinque*, 1566), perhaps the most influential edition of the LF in the modern era.[88]

Therefore, when Lehmann worked on his edition of the *vulgata* and decided to insert the *capitula extraordinaria* by Ardizone and Baraterius, he understood their relevance in the history of feudal law, but he could not know that they had already been put together, most likely by Ardizone, in the first half of the thirteenth century. With this short history of the *capitula extraordinaria* our description of the formation, development, and stabilisation of the LF has come to its natural conclusion.

85 For an updated edition of this treatise and hypothetical attribution to Iacobus de Aurelianis see now: A. Stella, 'The *Summa feudorum*'. On his various identifications, from Jacques de Revigny to Iacobus de Arena or Iacobus Balduini: Jacobus de Ravanis, *Summa feudorum*, ed. Corrado Pecorella (2nd edn.; Milan: Giuffrè, 1959); Kees Bezemer, 'Jacobus Balduini: Probably the Author of the *Summa Feudorum Parmensis*', *Tijdschrift voor Rechtsgeschiedenis*, 74 (2006), 325–335, where the debate on the *summa*'s authorship is outlined.

86 V. Colorni, *Le tre leggi*, 136–137.

87 P. Weimar, 'Die Handschriften', 69–70; Annalisa Belloni, *Professori giuristi a Padova nel sec. XV* (Ius commune Sonderhefte. Studien zur europäischen Rechtsgeschichte, 28; Frankfurt am Main: Klostermann, 1986), 138–140; E. Laspeyres, *Über die Entstehung*, 130–133.

88 Iacobus Cuiacius, *De feudis libri quinque* (Lugduni: ad Salamandrae apud Claudium Senetonium, 1566).

CHAPTER 3

# The Afterlife of the *Libri feudorum*

## 1 The *Libri feudorum* and the *ius commune* from the Thirteenth to the Fifteenth Century

Today much more is known of the learned law stemming from the exegesis of the LF than three decades ago, when Susan Reynolds suggested that the LF were 'one of the most extraordinarily neglected texts of the middle ages'.[1] In the thirteenth century, this collection was becoming the principal source for a new law of fiefs, no longer rooted in the Lombard law but a branch of Civil law based on the exegetical devices that had been until then used to interpret the Justinianic Corpus and the Canon law texts.[2] The integration of the LF within the *ius commune* can be appreciated through different types of sources, principally glosses, *lecturae, summae*, *quaestiones*, *consilia*, produced during and after its codification, and through an assessment of the activity of their authors—to this effect, the most useful reference point is an extensive list of authors in the feudal legal literature from the twelfth to the fifteenth centuries provided by Gérard Giordanengo in 1992.[3]

This integration took place because of the attention paid to the LF by the Italian glossators. The application of the exegetical method of the gloss by Pillius was only its first step, although perhaps the most important one. We have already mentioned the significance of his apparatus for the formulation of the notion of *dominium utile*, which would have momentous consequences for later jurisprudence and political theory, but one cannot stress enough its importance as a basis for the *glossa ordinaria feudorum* by Accursius, which became for centuries the standard exegetical tool for the study of the LF.[4]

1 S. Reynolds, *Fiefs and Vassals*, 3.

2 E. Cortese, 'Legisti, canonisti e feudisti: la formazione di un ceto medievale', in *Università e società nei secoli XII–XVI. Atti del 9° Convegno Internazionale di studi* (*Pistoia, 20–25 settembre 1979*) (Rome: Viella, 1982), 195–281, at 214–219, 230–234; Kenneth Pennington, 'Libri feudorum', in *Dictionary of the Middle Ages. Supplement 1*, ed. William C. Jordan (New York: Charles Scribner's Sons, 2004), 324–325.

3 G. Giordanengo, 'Les feudistes'; an updated, less detailed list is provided in G. Giordanengo, 'La littérature'.

4 E. Conte, 'Modena', 5–6. According to the author, *dominium utile* was 'one of the boldest devices designed by medieval legal scholarship, and at the same time one of the most important conceptual tools which made it possible to secure a legal grip on the vast network of rights on property'.

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In light of this, the inclusion of the LF in the new editions of the *Corpus iuris civilis* was at the end of this path, not at its beginning.[5] By the mid-thirteenth century, fiefs had been discussed by Civilians and Canonists for at least one century: from the mid-twelfth century onwards one can more than occasionally find decretals and Canon law commentaries or glosses dealing with fiefs and feudal oaths without a single mention of the LF,[6] as well as *consilia* ('legal briefs') and *quaestiones* (scholarly exercises) concerning similar matters provided either by petty practitioners or renowned jurists such as Iohannes Bassianus, who resolved those questions through arguments based on Roman law only.[7] This is not surprising since Roman law provided the bricks with which the edifices of the Italian city-states' legal systems were being built; Obertus de Orto himself, in the earliest known *consilium* on a feudal matter (c. 1147), demonstrated all his acquaintance with Civil law actions.[8] Accursius's standardisation of the text and its commentary, therefore, provided shared grounds for debate and exegetical analysis on matters that had been long since discussed in light of other sources by learned lawyers, churchmen, and court practitioners.[9]

Besides the glosses, the flourishing of feudal *summae* is perhaps the most noticeable consequence of the absorption of the LF within the *ius commune*. Giordanengo has counted about forty authors in feudal law from the thirteenth to the fifteenth centuries, in an inclusive list that also considers lawyers who did not rely directly on the LF or did so only loosely.[10] As for the thirteenth century, at least seven of them wrote *summae* on the LF, to which Giordanengo adds chapters or short tracts devoted to fiefs by Canonists (Goffredus de Trano and Henricus de Segusio in their *Summae decretalium*)[11] and a couple of works on homage (such as Martinus de Fano's and Iohannes de Blanosco's) containing no citations of the LF.[12] In some cases, feudal *summae* were very short tracts:

5 M. Ryan, 'Ius commune', 52.

6 K. Pennington, 'Feudal Oath of Fidelity and Homage', in *Law as Profession and Practice in Medieval Europe. Essays in Honor of James A. Brundage*, ed. K. Pennington, Melodie Harris Eichbauer (Farnham/Burlington: Ashgate, 2011), 93–116.

7 *Iter Austriacum 1853*, ed. Wilhelm Wattenbach, *Archiv für Kunde österreichischer Geschichts-Quellen*, 14 (1855), 78–79; Eduard Maurits Meijers, 'Les glossateurs et le droit féodal', *Tijdschrift voor Rechtsgeschiedenis*, 13 (1934), 129–149, at 141–149.

8 A. Padoa Schioppa, 'Il ruolo della cultura', 278–284; M. Ryan, 'Lombardist Glossae', 76–78.

9 K. Pennington, 'Law, feudal', in *Dictionary of the Middle Ages*, 320–323.

10 G. Giordanengo, 'Les feudistes'.

11 Henricus de Segusio did not produce any original writing but readapted Accursius's (or Iacobus Columbi's: see *supra*, ch. 2.5, footnote 63) reworking of Pillius's *summa*: G. Giordanengo, 'Les feudistes', 110.

12 For an edition of the excerpt on homage by Blanosco (Jean de Blanot): Jean Acher, 'Notes

for instance, the *summa* by Pillius, in its thirteenth-century reworking, was just a brief compendium of the LF, of which it discussed some key elements in light mostly of other chapters of the same text.[13] The *summa* by pseudo-Revigny, written shortly after 1250, was also relatively brief, possibly because it was unfinished, and it considerably relied on Civil and Canon law sources.[14] More frequently, however, the *summae feudorum* were large collections of problematic questions (*quaestiones*) organised by subject and subdivided into titles and chapters. There are several examples for this kind of treatise. Ardizone, who attended Azo's and Hugolinus's classes at Bologna in the 1220s, wrote his lengthy treatise in Verona in several stages, mostly during the 1230s, extending an initial, shorter version with *quaestiones* and arguments based on what he experienced in Verona—and thought useful for other lawyers to know—as he believed that these local practices were, at least potentially, normative, just as Obertus had suggested several decades before him.[15] The date of Odofredus's *summa* is unknown, but the activity of this famous jurist is not. He was from Bologna, where he taught law intermittently from 1229 or 1230 until the early 1260s: his reliance on a *proto-vulgata* version might suggest that he wrote the treatise in the 1240s, slightly before the establishment of the Accursian recension.[16] Some years later, Iohannes Blancus, a former law student at Modena,

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sur le droit savant au moyen age', *Revue historique de droit français et etranger*, 30 (1906), 138–178. On Blanot's attitude towards the LF and the problems with J. Acher's edition: A. Stella, '*In aliquibus locis est consuetudo*. French Lawyers and the Lombard Customs of Fiefs in the Mid-Thirteenth Century', in *Common Law, Civil Law, and Colonial Law. Essays in Comparative Legal History from the Twelfth to the Twentieth Centuries*, ed. William Eves, John Hudson, Ingrid Ivarsen, and Sarah B. White (Cambridge: Cambridge University Press, 2021), 25–46, at 38–42.

13 Hugolinus, *Summa feudorum*.

14 A. Stella, 'The *Summa Feudorum*'.

15 G.M. Varanini, A. Stella, 'Scenari veronesi', 255–265.

16 Enrico Spagnesi, 'Odofredo Denari', in DBGI, 1450–1452. Another interesting *summa* was the one attributed to Iohannes of Ancona, written in the latter part of the thirteenth century, perhaps in the Kingdom of Jerusalem, but its attribution has been questioned on the grounds that it is unclear whether this Iohannes is identifiable with Iohannes Phaseolus from Pisa, and also because the same treatise is ascribed to Martinus Syllimani: Martin Bertram, 'Johannes de Ancona: Ein Jurist des 13. Jahrhunderts in den Kreuzfahrerstaaten', *Bulletin of Medieval Canon Law*, 7 (1977), 49–64; Domenico Maffei, 'Dubbi e proposte su Giovanni Fazioli', in D. Maffei, *Giuristi medievali e le falsificazioni editoriali del primo Cinquecento* (Ius commune Sonderhefte. Studien zur europäischen Rechtsgeschichte, 10; Frankfurt am Main: Klostermann, 1979), 75–80; Cristina Bukowska Gorgoni, 'Fagioli, Giovanni', DBI, 44 (1994), 166–170; Jonathan Rubin, 'John of Ancona's *Summae*: A Neglected Source for the Juridical History of the Latin Kingdom of Jerusalem', *Bulletin of Medieval Canon Law*, 29 (2011–2012), 183–218.

wrote an extensive *Summa feudorum* by borrowing several parts of Ardizone's treatise, which he implemented with *quaestiones* based on cases he judged in person or attended as an onlooker during his long career as a lawyer, a diplomat, and a politician in Provence.[17] In the late thirteenth century, Dullius Gambarini, a lawyer employed at the royal court in Naples, was ostensibly encouraged by the king himself to produce and circulate a treatise called *Margarita feudorum*, which served to ease the resolution of disputes concerning fiefs in light of the LF—an operation that Mario Montorzi described as a downright act of 'politics of law'.[18]

All these treatises are of inestimable importance for later doctrinal debate, but one should not underestimate their practical dimensions in the time they were produced. Their authors aimed at discussing a variety of situations observable in the real world through a consistent vocabulary comprehensible to scholars across the Continent, and the LF became a very useful tool to that end.[19] One of their principal goals was certainly didactic: to prepare new generations of jurists and practitioners by deploying supple interpretive tools rather than rigid sets of rules. The LF helped them develop 'flexible and tolerant' standards which could be then used to control doctrinal debate over a very fluid reality.[20] For this to work, this literature had to keep a strong connection with the problems stemming from practice.

By the end of the thirteenth century, the LF had become an established source of the *ius commune*, so it was perfectly acceptable for jurists like Dinus de Mugello or Martinus Syllimani to quote the LF in glosses to the Digest or as an authoritative text in a *consilium*.[21] When the genres of *glossae* and *summae* exhausted their initial vitality, towards the end of the thirteenth century, we see the flourishing of *lecturae* or *commentaria*, a new form of exegetical literature consisting of interpretations of the text and its glosses—an exegesis of exegeses.[22] Even if the extensive *Lectura librorum feudorum* (1304–1309) by

17 Iohannes Blancus, *Epitome iuris feudorum* (Coloniae 1565); G. Giordanengo, 'Jean Blanc, feudiste de Marseille XIIIe siècle', *Annales de la Faculté de Droit de l'Université de Bordeaux*, 2 (1978), 71–93.

18 Mario Montorzi, *Processi istituzionali: episodi di formalizzazione giuridica ed evenienze d'aggregazione istituzionale attorno ed oltre il feudo. Saggi e documenti* (Padova: CEDAM, 2005), 71–133.

19 K. Pennington, 'Libri feudorum'.

20 M. Ryan, 'Ius commune', 61; M. Ryan, 'Succession to fiefs. A Ius Commune Feudorum?', in *The creation of Ius commune. From* casus *to* regula, ed. John W. Cairns, Paul J. Du Plessis (Edinburgh: Edinburgh University Press, 2010), 143–158.

21 M. Ryan, 'Ius commune', 58–60.

22 M. Ascheri, *The laws*, 255–261.

Andreas de Isernia would grant him great fame in the late Middle Ages, when he was known as the *monarcha feudistarum* (the 'king of feudal lawyers'), the much shorter *lectura* (1306–1309) by Iacobus de Belviso enjoyed more success, being praised by Baldus in his treatise on the LF and broadly used in France, for instance, by Bertrand de Deaux (1318) and Bertrand Chabrol (end of 1300).[23]

Feudal law and the exegeses of the LF underwent further developments in the fifteenth century when doctrinal developments became entangled with political matters, such as fealty, the enfeoffment of jurisdictions, and new conceptions of sovereignty. The potential in defining with some precision and legal authority mutual obligations entailed in a vertical political relationship, made of feudal law a valuable tool for the elaboration of new configurations of power. Indeed, authors in feudal law often managed to carve out a successful career under the patronage of a ruler, an important source of legitimation for feudal law itself. One should not forget that Baldus dedicated his *lectura* to the future duke of Milan, Gian Galeazzo Visconti, when he was teaching in Pavia; five decades later Baraterius did likewise, to Filippo Maria Visconti (1442); Mattheus de Afflictis (d. 1520s), the author of famous *commentaria* on the LF (1475–1480), embarked upon a quite successful, if not too linear, career in the court of the king of Sicily.[24] If fifteenth-century feudists, related or not to princely powers—see for instance Iacobus Alvarottus (1438) or Mincuccius (1430–1440s)—tended to stress the constitutional value of feudal law, putting emphasis on an idea of political power as unilateral, it is also true that the same doctrine continued to stress the importance of mutual obligations and the holders' rights.[25]

The entanglement of feudal law with the political sphere, which conferred an aura of authority on feudal law and strengthened the professional position of its authors, was an important factor for the flourishing of treatises and courses based on the LF across Europe—for the fourteenth century, Giordanengo has counted six Italian authors, eight French, one Dutch; in the following century, feudal treatises were written in Belgium, Germany and, perhaps, Bohemia.[26] If this success was undoubtedly linked to the integration of the LF

23 G. Giordanengo, 'Les feudistes', 119–123, 128–129; Cristina Danusso, *Ricerche sulla "Lectura feudorum" di Baldo degli Ubaldi* (Milan: Giuffrè, 1991), 151–176.

24 C. Danusso, 'Barattieri, Bartolomeo', DBGI, 161; Giancarlo Vallone, 'D'Afflitto, Matteo', DBGI, 624–627; G. Vallone, *Iurisdictio domini. lntroduzione a Matteo d'Afflito e alla cultura giuridica meridionale tra Quattro* e *Cinquecento* (Lecce: Milella, 1985).

25 Christian Zendri, 'Relazioni feudali e scienza giuridica nella tradizione occidentale: da Baldo degli Ubaldi a Iacopo Alvarotti', *Rivista internazionale di diritto comune*, 30 (2019), 263–284.

26 G. Giordanengo, 'La littérature', 32–34.

in the new editions of Justinian's Novels, there are several elements to consider in order to reappraise its actual diffusion and impact across Europe.[27]

Giordanengo has drawn attention to the fact that the ranks of feudists were small compared with the extensive cohorts of Civilians; as a consequence, the exegetical literature associated with the LF remained quantitatively low compared to the bulk of Civil law literature—this is all the more evident in the number of glosses, no more than 680 to the LF against the more than 96,000 for the entire *Corpus iuris civilis*.[28] It is true that the LF, being written in medieval Latin and relatively recently, might not have needed significant interpretive efforts, but such figures are still striking. Moreover, the LF were not generally taught in ordinary curricula, which continued to be principally dedicated to the exegesis of the Justinianic Corpus, but in extraordinary classes and not seldom by early graduates.[29] Further doubtful elements affect the chronology of the diffusion of the LF: a thorough analysis carried out by Emanuele Conte on the manuscript tradition of the *Tres libri*—the last three books of the Code of Justinian which, together with the Institutes and the *Authenticum*, formed the book called *Volumen*, the last of the five *libri legales* through which Civil law was taught—proved how in many cases the LF had been copied at the end of the *Authenticum* by different hands and therefore presumably tied to it later than the thirteenth century.[30]

Problems concerning the LF's authority and its relationship with court practice emerge as soon as we move away from the strictly exegetical literature and consider other legal sources such as *quaestiones* and *consilia*. The *quaestiones* were dialectical exercises inspired by scholasticism; to analyse a topic, students were asked to ponder all the arguments in its favour (*pro*) or against it (*contra*). Within the law schools, this method consisted in the discussion of legal sources *pro* or *contra* a particular point of law (*de iure*) or a real case (*de facto*). From the late twelfth century the first written collections of *quaestiones* appeared, put together by students or by professors, such as Pillius or

27 Dirk Heirbaut, 'Feudal law', in *The Oxford Handbook of European Legal History*, ed. Heikki Pihlajamäki, Markus D. Dubber, Mark Godfrey (Oxford: Oxford University Press, 2018), 528–548.

28 G. Giordanengo, 'Les feudistes', 72–73; G. Giordanengo, 'La littérature juridique'.

29 Maike Huneke, *Iurisprudentia romano-saxonica. Die Glosse zum Sachsenspiegel Lehnrecht und die Anfänge deutscher Rechtswissenschaft* (Schriften der Monumenta Germaniae Historica, 68; Wiesbaden: Harassowitz, 2014), 298–299.

30 E. Conte, *"Tres Libri Codicis": la ricomparsa del testo e l'esegesi scolastica prima di Accursio* (Studien zur europäischen Rechtsgeschichte, 46; Frankfurt am Main: Klostermann, 1990), 31–36.

Roffredus, who intended to use them as didactic tools.[31] No exhaustive analysis on feudal *quaestiones* has been carried out, so it is not possible to draw general conclusions from the partial data available; it is nonetheless clear that citations to the LF are negligible not only, for instance, in Azo, a strenuous promoter of the dogma that only Justinian's sources were citable,[32] but even in Pillius, who was particularly keen on using the LF as an authoritative source.[33]

The *consilia* were written legal opinions on specific court cases provided by external law experts, consulted ad hoc, which are attested from the twelfth century onwards.[34] As Giordanengo has shown in a contribution in which he has listed more than seventy feudal *consilia*, this source testifies to the various interconnections between the doctrines discussed and developed in the universities and courtroom practicalities.[35] However, although one would expect a high incidence of allegations to the LF in feudal cases, they are on the contrary just a few. Giordanengo explained this scarcity by suggesting that, whilst the Corpus of Justinian was deemed to be intrinsically authoritative, the LF were not, since they relied to a significant extent on the custom of Lombardy and, therefore, respected legal experts would not be too keen to suggest arguments based on it.[36]

Whatever the reasons for the lack of citations in these different sources, they seem to be connected to the problem of the legal authority of the collection—a problem that lay at the core of a debate that arose in explicit terms only in the early fourteenth century.[37] Indeed, thirteenth-century exegetes did not always

31 A. Belloni, *Le questioni civilistiche del secolo XII: da Bulgaro a Pillio da Medicina e Azzone* (Studien zur europäischen Rechtsgeschichte, 43; Frankfurt am Main: Klostermann, 1989); Manlio Bellomo, *'Quaestiones in iure civili disputatae'. Didattica e prassi colta nel sistema del diritto comune fra Duecento e Trecento* (Rome: ISIME, 2008).

32 E. Cortese, *Il Rinascimento giuridico medievale* (Rome: Bulzoni, 1992), 36–37 and 101n.

33 A. Belloni, *Le questioni*, passim.

34 M. Ascheri, 'Le fonti e la flessibilità del diritto comune: il paradosso del *consilium sapientis*', in *Legal Consulting in the Civil Law Tradition*, ed. M. Ascheri, Ingrid Baumgärtner, Julius Kirshner (Berkeley: Robbins Collection, 1999), 1–10; M. Ascheri, 'Il *consilium* dei giuristi medievali', in *"Consilium". Teorie e pratiche del consigliare nella cultura medievale*, ed. Carla Casagrande, Chiara Crisciani, Silvana Vecchio (Florence: Sismel—Edizioni del Galluzzo, 2004), 243–258.

35 G. Giordanengo, 'Consilia feudalia', in *Legal Consulting*, 143–172.

36 G. Giordanengo, 'Consilia feudalia', 152–154.

37 In what follows I refer to C. Danusso, *Ricerche*, 151–176 and C. Danusso, 'Federico II e i *Libri Feudorum*', in *Federico II e la civiltà comunale nell'Italia del Nord. Atti del Convegno internazionale promosso in occasione dell'VIII centenario della nascita di Federico di Svevia* (*Pavia, 13–14 ottobre 1994*), ed. Cosimo Damiano Fonseca (Rome: De Luca Editori d'Arte, 2001), 209–234.

take a clear stance on this issue: Ardizone, and Blancus after him, attributed to the LF the force of law—or, at least, they acknowledged its value in preserving and transmitting an otherwise oral custom, whose normative force they did not doubt. A more cautious opinion was that by Odofredus, who saw the LF as complementary to local usages, which themselves provided the principal normative framework for feudal cases, and in the absence of which one ought to resort first to the LF and, eventually, to the other sources of the *ius commune*.[38]

At the time, however, some doubts as to the validity of the LF were raised by Henricus de Segusio, the renowned canonist known as Cardinalis Hostiensis. Henricus made a paramount distinction between the imperial constitutions contained in the LF, which possessed universal validity, and the customary texts of the collection, which were local and could not be taken as a general rule since feudal controversies were everywhere judged according to local customs. This opinion was not as radical as it might sound, since he immediately made an important exception which reinstated the LF within the feudal normative framework: if local custom fails in providing clear rules in a dispute, then one is to resort to the custom of other regions—a statement that is followed by a citation of LF 2.1: if also this custom fails, the quick-minded lawyer may use the written law without objection.[39]

The distinction made by Hostiensis would be repeated for centuries in the arguments against LF's authority and reveals thus widespread diffidence towards the customary texts of the compilation. Another eminent lawyer, Iacobus de Ravanis, better known as Jacques de Revigny, who taught at Orleans in the 1260–1270s, would stress this distinction. He acknowledged the force of the law of the imperial constitutions and even recognised the LF as the 'tenth book of the *Authenticum*', but he did not touch upon directly the ambiguities of the non-imperial texts. In fact, Revigny never showed any particular interest in that compilation and did not comment on it in his works on the *Authenticum*. He rather expounded the idea that it was because of the multiplicity of local customs that he was unable to provide any clear rule concerning feudal tenures.[40]

38 C. Danusso, 'Federico II', 50–52.

39 Henricus a Segusio Cardinalis Hostiensis, *Aurea summa* (Coloniae: Lazarus Zetzner, 1612), 869–870. On his opinions on the LF: C. Danusso, *Ricerche*, 160 35n.

40 Frank Soetermeer, 'Revigny (de Ravenneio, de Ravigneio), Jacques de', DHJF, 867–870; K. Bezemer, *What Jacques Saw. Thirteenth century France through the eyes of Jacques de Revigny professor of law at Orleans* (Studien zur europäischen Rechtsgeschichte, 99; Frankfurt am Main: Klostermann, 1997), 104–106; Laurent L.J.M. Waelkens, *La théorie de la coutume chez Jacques de Révigny: édition et analyse de sa répétition sur la loi De quibus* (*D. 1, 3, 32*) (Rechtshistorische Studies, 10; Leiden: Brill, 1984), 474. On the relationship between the works of Revigny and Blanot: R. Feenstra, '*Quaestiones de materia feudorum* de Jacques

Many thirteenth-century lawyers, however, did not take a firm position on this issue, a sign that it was not deemed urgent at the time. The situation would change in the early fourteenth century when the first cogent arguments in defence of the authority of the LF suggest that the question started being perceived as problematic at a larger scale. Indeed, in the first decade of the century, Andreas de Isernia and Iacobus de Belviso replied to criticisms that had never been organised within a structured narrative but had been put forward singularly.[41] Arguments against the authority of the LF, and therefore their validity outside Lombardy, can be summarised in three main points: firstly, feudal cases ought to be judged according to local customs, which varied from place to place and thus did not need a universally normative text; secondly, if one excluded the imperial legislation contained in the collection, the LF were nothing but the local custom of Lombardy, hence applicable only to that region; thirdly, the LF as a consistent compilation did not emanate from imperial authority but, on the contrary, from the initiative of private citizens who had no authority to legislate.[42]

As Danusso has demonstrated, the arguments in favour of the LF, thanks to which we can understand the principal points of the debate, were originally developed by Andreas de Isernia and Iacobus de Belviso, and then re-elaborated, towards the end of the century, by Baldus, who set the cornerstones for any later discussion on the matter. The arguments proposed by the three authors revolved around four main points. Firstly, although local custom had the force of law in feudal controversies, Roman law and Lombard law were not sufficient to cover all the matters that local custom did not regulate, and, therefore, the LF were not just useful but even necessary to cover those legal gaps. Secondly, even if one deemed the texts of the LF that did not derive from the emperor as local custom, they complied with a general principle of rationality (*rationabilitas*) which made them universally valid. Thirdly, one could not

de Revigny', *Studi Senesi*, 84 (1972), 379–401; E. Conte, 'Framing the Feudal Bond: a Chapter in the History of the *Ius Commune* in Medieval Europe', *Tijdschrift voor Rechtsgeschiedenis*, 80 (2012), 481–495.

41 It is not made clear who these authors were, but Hostiensis and Revigny might be among the principal ones.

42 That the problem of the authority of the LF was perceived as new is proved by Belviso's words: 'Some want to say that this book is not authoritative … and I never thought to discuss this question until now, although I have held courses on this book eight times' ('volunt quidam dicere quod liber iste non est auctorisabilis … nec cogitavi istam quaestionem ante haec tempora disputare, et tamen octo vicibus librum istum legi'): C. Danusso, *Ricerche*, 152 10n. For the citation: Iacobus de Belviso, *Apparatus in usus et consuetudines feudorum* (Lugduni: Sachon, 1511; repr. Bologna, 1971), fo. 82[va].

ignore that ‘from time immemorial’ (Isernia’s expression) the LF had been an undisputed object of exegeses, a tradition that was itself sufficient to bestow authority upon the text. All these arguments were, however, superseded by the fourth and most relevant one: the conviction that the LF had been integrated into the *Authenticum* by command, or at least by approval, of Emperor Frederick II.

This argument derives from a controversial account by Odofredus. The Bolognese lawyer’s *lectura* on the Code reports that the emperor, upon his coronation, had sent to Bologna the constitution *Ad decus* he had issued on the occasion with the explicit command to add it to the *Authenticum* alongside the Novels of Justinian. Without stating any clear causal relation, Odofredus added in the following sentence that the professor Hugolinus Presbyteri ‘put the feudal book after the ninth collection, together with the constitutions of Frederick I and Frederick II’.[43] Therefore, Odofredus did not explicitly state any causal relation between the inclusion of the coronation constitution in the *Authenticum* and the attachment of the LF to it. In fact, in the early fourteenth century, this correlation was implicit at best—Belviso only alluded to it, while Isernia vaguely referred to the emperor’s approval, not his command. As Danusso has shown, only towards the end of the century would a causal, and not just temporal connection between the two events be postulated by Baldus, in the first coherent historical narrative of the origins of the LF as the tenth *collatio* of the *Authenticum* by imperial command.[44] Although this narration would stick in the scholarly tradition until relatively recent times, sound arguments have been raised not only against the connection between the two accounts but also against the fact that the integration of the LF in the Corpus was Hugolinus’s doing.[45]

This narration, however, made perfect sense in a context in which feudal law—and, of course, the exegesis of the LF—became intertwined with the rising regional states, especially in the Duchy of Milan and the Kingdom of Sicily. Indeed, it provided grounds for the legitimation of both feudal law as a state-making tool and the social standing of its authors. Feudal law was far from being the principal constitutional framework within which the Italian states were built; nonetheless, it had become a very useful tool, one might say

43 Odofredus, *Lectura super Codice* (Lugduni: Petrus Compater et Blasius Guido, 1552; repr. Bologna 1968), fo. $11^{vb-ra}$: ‘post nonam collationem posuit librum feudalem et omnes constitutiones Frederici antiqui et junioris’.

44 C. Danusso, ‘Federico II’, 56–66.

45 P. Weimar, ‘Die Handschriften’, 49–50. Ennio Cortese defines this narration a ‘fabrication circulating from the thirteenth to the seventeenth centuries’: E. Cortese, *Le grandi linee della storia giuridica medievale* (Rome: Il cigno Galileo Galilei, 2000), 307.

one among many, to sanction the relationships between rulers and those who were, or were to become, their noble subjects, holders of jurisdictional rights. French law and its lawyers were not alien to these processes but in France the attitude towards the LF and custom developed quite differently.

## 2 The *Libri feudorum* in Late Medieval and Early Modern France

The relationship between universal and local law, tightly linked to the problem of what sovereignty and its fundamental principles were, was felt as particularly urgent in France. In the fourteenth century, the Valois kings were promoting a strong centralisation of powers, but regional customs still provided the principal legal framework for each subject territory. The integration of regional nobility within the kingdom often took the shape of feudal subjection to the crown, which often left untouched the local configurations of powers—within which, too, feudal relationships were diffused. An increasing number of royal ordinances were issued and local customary rules regulating specific aspects of fief-holding emerged then in clearer terms than in the past, becoming even more visible in the fifteenth century, after Charles VII commanded the writing-down of all the regional *coutumiers* of France in 1454.[46]

The flourishing of exegetical literature associated with the LF, from c. 1300 onwards, testifies to its success as a didactical tool across the French territories. However, as soon as this compilation spread in the law schools, a vigorous debate concerning its customary origins burst out. We have already observed how Revigny, in the late thirteenth century, maintained an ambiguous position towards the text and this issue in particular. Confrontation concerning the authority of the LF and their *authenticitas*, i.e. the legitimacy of its inclusion in the *authenticae* Novels, would soon focus on the customary nature of the collection and its questionable universality. We have seen that Andreas de Isernia and Iacobus de Belviso organised the first structured arguments in favour of this point in the first decade of the fourteenth century. The first cogent attack against the alleged universality of the LF had to wait until c. 1341, and came from Petrus Iacobi from Aurillac, then a professor at Montpellier.[47] The French lawyer put forward his critique in an extension to his treatise (*Aurea practica libellorum*) on judicial procedure concerning the legal formulae for disputes

46 G. Giordanengo, 'Consuetudo', 59–69.

47 Louis de Carbonnières, 'Jacobi (Jame d'Aurillac, *de Aureliaco*, ou *de Montepessulano*) Pierre', DHJF, 547–549.

regarding fiefs and vassals.[48] In one of these additions, he outlined the grounds on which vassals ought to lose their fiefs, mostly quoting the LF (2.23–24), but added in the following paragraph that these 'feudal customs [i.e., the LF], since they are local, cannot bind us in our homeland, for the laws of the book of fiefs do not bind anyone unless it is an imperial constitution'—and, to prove this point, he quoted Hostiensis.[49] In the following argument he pushed the critique farther by stating that 'all considering, no matter what I have said now or earlier about the entire matter of fiefs, I say, and this is in fact the truth, that the customs written in the *Libri feudorum*, from top to bottom, ought to be considered of no value ['pro nihilo haberi debent'] for what concerns us, in the whole kingdom of France'. His conclusion rested on the deep-rooted idea that disputes over fiefs were to be determined by local custom; unlike Odofredus and Hostiensis, however, he did not reserve to the LF any subsidiary function: should local custom not cover a matter of dispute, one ought to consider only Civil law or Canon law and discard the 'book of fiefs' altogether.[50]

Petrus Iacobi's radical views—made ambiguous by the several citations to the LF in his treatise—embodied a widespread aversion towards that collection, but not all French jurists were of the same opinion. Courses of feudal law based on the LF were quite common in the southern regions—in Montpellier, Toulouse, Avignon[51]—and the school of Orleans seems to have developed a specific interest in this text and, perhaps, the first ordinary lectures on the LF.[52] From the works of Bertrand Chabrol, who taught in Orleans in the second half of the fourteenth century, it is possible to infer the existence of at least two professors—Jean Nicot and Jean de la Ferté—who had previously held courses on feudal law but whose works have not survived. It is worth noting how Chabrol felt it useful to discuss at the very outset of the course the problem of the continuity of the LF with the rest of the *Authenticum*: he wrote that some teachers, such as Jean de la Ferté, treated it as the tenth book of the Novels, but he and his master Jean Nicot disagreed, as they deemed it a distinct subject: 'ista

48 G. Giordanengo, 'Les feudistes', 126–128; C. Danusso, *Ricerche*, 172–173; Petrus Iacobi de Aureliaco, *Aurea practica libellorum* (Coloniae Agrippinae: Calenius & Quentel, 1575).

49 Petrus Iacobi de Aureliaco, *Aurea practica*, fo. 170$^{b}$–171$^{a}$.

50 Petrus Iacobi de Aureliaco, *Aurea practica*, fo. 173.

51 For instance, Jean Rainaud from Marseille, a professor in Avignon about 1418–1420: Iohannes Raygnaud, *Comprehensorium feudale*, ([Lyon]: Antonius du Ry, [1516]), fo. 5$^{rb}$–6$^{vb}$.

52 Marguerite Duynstee, 'La *Lectura Feudorum* de Bertrand Chabrol', *Recueil de mémoires et travaux publié par la Société d'histoire du droit et des institutions des anciens pays de droit écrit*, 15 (1991), 103–120; M. Duynstee, *L'enseignement du droit civil à l'université d'Orléans du début de la guerre de Cent ans (1337) au siège de la ville (1428)* (Studien zur europäischen Rechtsgeschichte, 253; Frankfurt am Main: Klostermann, 2013).

materia non habet materiam coniunctam', i.e. this matter has no relationships with any other.[53] He too reflected on the dual nature of the LF, customary and imperial, but unlike Petrus Iacobi, he reached the conclusion that, although only the emperor had the power to create the law, and that was certainly not the case with Obertus, who was still deemed the compiler of the LF, the emperor himself had approved these customs, which therefore were law ('leges sunt feudorum').[54] Chabrol's argument based on the emperor's approval derived from Belviso's *Lectura feudorum*, which he quoted incessantly: although unsubstantiated it continued to provide a solid justification for the study and use of the LF.

The lack of evidence in support of an argument as important as Belviso's lay it open to further criticisms, which became particularly strong in sixteenth-century France, where according to Brown and Reynolds the original sin of feudalism took place. A new generation of jurists imbued with humanistic culture then dissected all the points made in favour or against the LF in the previous two hundred years. What had changed was the intellectual framework in which those points were combined and organised. The principal novelty was the analysis of law from a historical perspective, which had to be tested meticulously based on sources through the new tools provided by philology. The encounter of textual and historical analysis in the field of legal studies gave birth to the first structured theories on feudal institutions not just as legal devices but as consistent entities; consequently, there emerged the first substantiated hypotheses on their historical origins. The leading actors of this debate soon polarised into two opposing sides: on the one hand, the advocates of the ancient Roman origins of fiefs—the 'Romanist' thesis—such as Ulrich Zasius, Andrea Alciato, and Jacques Cujas. On the other hand, the supporters of the German roots, called 'Germanists', were led by Charles Dumoulin and François Hotman.[55]

Among the former ones, the most important figure, in light of his later influence, was certainly Cujas (1522–1590), who approached the LF while conducting his studies on Justinian's Novels. He reorganised the content of the LF in five books, including the extravagant material available to him, thus to overcome the apparent inconsistencies of the texts and refute some arguments brought against the authority of the collection. This recompilation, called *De feudis libri*

53 M. Duynstee, *L'enseignement*, 303–304. This insightful book offers the critical edition of various excerpts of Chabrol's *lectura*.

54 M. Duynstee, *L'enseignement*, 316.

55 Donald R. Kelley, 'De origine feudorum. The Beginnings of an Historical Problem', *Speculum*, 39/2 (1964), 207–228.

*quinque*, was probably the most influential edition of the LF, which enjoyed long-standing success and made headway towards a more analytical approach to the text. As for the origins of fiefs, however, Cujas came up with a scarcely original theory that derived them from Roman law tenurial contracts.[56]

On the opposite side, Charles Dumoulin (1500–1566), a convinced Gallicanist, was aiming to demolish the Romanist thesis and provide a consistent theory of the Frankish origins of feudal institutions.[57] Dumoulin was a very talented lawyer but also a staunch supporter of the national propaganda endorsed by the monarchy, which was keen on emphasising the intrinsic superiority of French institutions and legal tradition. The milieu of the Gallican jurists was then deliberately promoting widespread 'distrust of "ultramontane" institutions', for whose diffusion in France they generally blamed Roman law, engendering what has been described as 'the most ferocious kind of Italophobia', soon exacerbated by the religious wars of that century.[58] This violent thrust against Romanism drove Dumoulin's demonstration that Roman law and the LF were inapplicable to the French legal system, and that feudal institutions, so deeply entrenched in the structuring of the kingdom, were intimately French. Taken singularly, his arguments against the authority and authenticity of the LF were the same as his forerunners'—principally, that its compilers were not legislators and that feudal matters ought to abide by local custom alone. However, the place where he decided to expound these arguments, the introduction to his reform of the Parisian *coutumier*, which was supposed to function as *ius commune* in the whole kingdom, could not be more indicative of the author's purpose: to state the supremacy of locally-grown French customary law over any external intromission, be it that of ancient Roman law, Lombard feudal custom, or even imperial legislation.[59]

With Dumoulin, we have reached the root of the problems with feudalism according to Reynolds and Brown. Indeed, the main terms of his narration of the origins of fiefs are strikingly similar to those used by Bloch and Ganshof. According to Dumoulin's view, fiefs and vassalage originated in ancient Gaul; although they pre-existed the formation of the empire, under Charle-

56 Cuiacius, *De feudis*, 4: 'Actores, procuratores, custodes praediorum, insularii, conductores, emphyteuticarii, chartularii, precarii possessores'; Laurens Winkel, 'Cujas (*Cujacius*) Jacques', DHJF, 291–293.

57 Jean-Louis Thireau, 'Du Moulin (Du Molin, Dumoulin, *Molinaeus*) Charles', DHJF, 363–366; D.R. Kelley, *Foundations of Modern Scholarship: Language, Law, and History in the French Renaissance* (New York: Columbia University Press, 1970), 151–182.

58 D. Kelley, 'De origine', 222.

59 Carolus Molinaeus, *Commentarii in consuetudines Parisienses*, in Carolus Molinaeus, *Opera quae extant omnia*, 2 vols. (Lutetiae Parisiorum: Cramoisy, 1612), i, 1–1304, at 5–48.

magne they became one of the typical features of Frankish power—a claim that allowed him to prove that fief-giving was a royal right that the king of France had inherited directly from the Carolingians, and which the elective German emperors were lacking, not being blood-related to the Frankish dynasty. A corollary of these two points was that the Carolingians had spread feudal institutions throughout Europe with their conquests. All these arguments supported the most radical and important one: feudal institutions, being originally and distinctly French, ought to be regulated without any external intrusion, i.e. through distinctly French norms—the Parisian customary law that Dumoulin was then reforming and that he upheld as the highest normative expression of the French people.[60] Dumoulin's thesis, only partly updated by Hotman, would set the principal terms for later approaches to feudal institutions. Indeed, as Donald Kelley put it, these authors 'were able to place the study of law and institutions into a European context and to employ a rudimentary kind of comparative method', which fascinated scholars on a continental scale.[61]

The historical-philological approach to feudal institutions brought in this way the emergence of explanatory accounts of the 'feudal' origins of many European polities and the idea that feudal institutions had to be somehow universal. Similar approaches and ideas also spread in Italy, where the LF continued to be considered an undisputed source of law, despite the traditional scepticism towards Germanist positions—see, for instance, the reconstruction of Giambattista Vico, who located the origins of fiefs at the very beginning of Roman law, the *ius Quiritium*.[62]

Through the French tradition, feudal law was imported into Scotland and England, respectively by Thomas Craig and Henry Spelman, to whom Frederic William Maitland and, after him, John G.A. Pocock ascribed the introduction or 'discovery' of the feudal system in England, with paramount consequences on subsequent interpretations of the kingdom as 'feudal'.[63]

60 D. Kelley, *Foundations*, 202.

61 D. Kelley, *Foundations*, 211.

62 Raffaele Ruggiero, 'Vico e la ricostruzione storica degli istituti feudali: la giurisprudenza napoletana tra Sei e Settecento', in *The Vico road. Nuovi percorsi vichiani. Atti del convegno internazionale* (*Parigi, 13–14 gennaio 2015*), ed. Monica Riccio, Manuela Sanna, and Levent Yilmaz (Studi vichiani, 54; Rome: Storia e Letteratura, 2016), 145–166; C. Danusso, *Ricerche*, 167–170; Giuliana d'Amelio, 'Polemica antifeudale, feudistica napoletana e diritto longobardo', *Quaderni storici*, vol. 9, no. 26/2 (1974), 337–350.

63 *The Collected Papers of Frederic William Maitland*, ed. Herbert Albert Laurens Fisher, 3 vols. (Cambridge: Cambridge University Press, 1911), i, 489: 'the feudal system was a very early essay in comparative jurisprudence, and the man who had the chief part in introducing the feudal system into England was Henry Spelman'; John G.A. Pocock, *The Ancient*

However, Germany also proved a fertile ground for these ideas, especially considering the later influence of the tradition of German legal-historical studies on modern historiography. As one would expect, the French Germanist theses met with immediate success, without, however, obliterating the traditional exegesis of the LF, which continued to circulate, especially in the reformed version by Cujas. Here, too, the customary texts of the LF were considered as the local custom of Lombardy, but they were believed to stem from the social practice of a Germanic people, the Lombards or Langobards, a connection that revealed the idea of a common origin, rooted in custom, uniting the Germanic peoples. Another relevant difference was that in the *Reich* the imperial legislation included in the LF could not be dismissed as 'local law', as Dumoulin had done. However, seventeenth- and eighteenth-century German feudal literature also was characterised by a variety of approaches.[64] No scholar would at that point doubt the intimately feudal nature of the *Reich*. Johann Peter von Ludewig (1740), for instance, defined Germany as 'ein Lehnreich' ('a feudal empire'), which should have been restored by rediscovering its medieval roots and removing the Italian doctrines.[65] On the other hand, one can also find opinions such as Georg Adam Struve's or Georg Ludwig Böhmer's, according to whom the LF constituted the common law of fiefs in Germany—that is to say, a law possessing subsidiary function in respect to local law and custom, which were acknowledged as the principal normative frameworks.[66]

Even when the LF faded out of the German legal systems, during the slow and irregular stages of codification of German law, studies on that collection

*Constitution and the Feudal Law. A Study of English Historical Thought in the Seventeenth Century: a reissue with a retrospect* (Cambridge: Cambridge University Press, 1987), 70–90 (on the relationships between the French school and Craig), 91–123 (on their influence on Spelman and the English 'discovery' of feudalism). Leslie Dodd, 'Thomas Craig on the origin and development of feudal law', *Tijdschrift voor Rechtsgeschiedenis*, 87 (2019), 86–127.

64 Otto Brunner, 'Feudalismus, feudal', in *Geschichte Grundbefriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, ed. Otto Brunner, Werner Conze, Reinhart Koselleck, 8 vols. (Stuttgart: Klett-Cotta, 1972–1997), ii (1975), 337–350, at 339–340.

65 Ioannes Petrus de Ludewig, *Iura feudorum romani imperii atque Germaniae principis* (Halle: Impensis Orphanotrophei, 1740), fo. 15 and 29 ('ut Germaniam restitueremus Germaniae, per medii aeui lumina, reiectis et exsibilatis dogmatibus peregrini Latii et Longobardiae').

66 C. Danusso, 'Federico II', 75. Struve described the Lombard law as 'iura feudalia quibus hodie in imperio utimur': Georgius Adam Struvius, *Syntagma iuris feudalis* (Jenae, 1666), 29–34. The title of one of G.L. Böhmer's treatises, concluded in 1764, could not be clearer: 'the principles of feudal law, especially the Lombard one, which is observed across Germany': Georgius Ludovicus Boehmerus, *Principia juris feudalis praesertim Longobardici quod per Germaniam obtinet* (Gottingae: Vandenhoeck, 1767).

were not interrupted. On the contrary, the refined tools of historical and textual analysis allowed the formulation of the first plausible theories on the LF's authorship and formation.[67] It was in the wake of such a rich tradition that Ernst Adolph Theodor Laspeyres, a pupil of Friedrich Carl von Savigny, published in 1830 a fundamental work on the origins and codification of the LF, which still today is a reference point for any study on the collection.[68] Some decades later, Karl Lehmann would offer a critical edition of what he deemed as the *recensio antiqua* (1892), soon followed by a critical edition of the *vulgata* (1896), which is still the reference edition for the LF.[69]

## 3 The *Libri feudorum* and Feudalism: Open Questions

This cursory exploration of the uses of the LF leads us back, eventually, to some interpretive issues raised by Reynolds. The breadth of the debate originating from *Fiefs and Vassals* stands as proof of the relevance of the LF for present-day historiography so that it seems useful to stress some of the elements on which historians tend to agree before assessing some problematic points regarding the LF.[70]

If, as we have seen, early modern jurists interpreted legal notions of fiefs and vassalage as historically determined institutions, later scholars were able to project these notions onto medieval society as a whole—a transition that is deemed accomplished when Montesquieu wrote his *Histoire de la féodalité* in his major work *De l'esprit des lois* (1758), in an attempt to reconcile the Germanist and Romanist positions that still marked French debate on the matter.[71]

67 Karl Wilhelm Pätz, *De vera librorum iuris feudalis Longobardici origine prolusio* (Gottingen: Dieterich, 1805); Carl Friedrich Dieck, *Literärgeschichte des langobardischen Lehenrechts bis zum vierzehnten Jahrhundert ihren Hauptgegenständen nach dargestellt* (Halle: Friedrich Ruff, 1828).

68 E. Laspeyres, *Über die Entstehung*. Laspeyres deemed superficial the old debate about the authenticity and validity of the LF, i.e. the concern as to whether this collection had been attached to the Roman legal sources rightly, or whether it contained a 'true' *ius commune*. He complained that this matter had been tackled with too much zeal in the past decades, and that even the latest studies on the LF, i.e. G.L. Böhmer's and C.F. Dieck's, were not satisfactory. He also lamented their heavy reliance on Cujas's outdated edition.

69 K. Lehmann, *Consuetudines*; K. Lehmann, *Das langobardische*.

70 A very insightful and critical overview of the implications of Reynolds's deconstruction on the old models of feudalism and the recent historiography, with particular reference to German scholarship, is: Giuseppe Albertoni, *Vassalli, feudi, feudalesimo* (Rome: Carocci, 2015).

71 Charles de Secondat baron de Montesquieu, *De l'esprit des lois*, 2 vols. (Genève: Barrillot &

This transition brought forward a notion of feudalism (or *féodalité*) which was virtually detached from the analysis, or any direct knowledge, of the LF and which was soon used to describe the privileges of the noble class—those that the French revolutionaries declared to abolish in 1789.[72] Eventually, feudalism became an abstract category employed by economists and sociologists to refer to a stage of social development in the history of humankind, or a mode of production, whose inconsistencies have been effectively outlined by Brown in her famous 1974 article and further developed by Reynolds.[73]

It would take us too far even to sketch the variety of responses elicited by Reynolds's deconstruction, which vary depending on the field of study, the historiographical tradition, or individual approach. Medievalists have tended to be quite receptive, whilst legal historians seem to be rather reluctant about dropping the notion of feudalism altogether and generally diffident concerning the notion of 'learned' or 'academic' law that underpins Reynolds's thesis.[74] If we consider historiographical tradition, with some exceptions British and American historians have been keen to accept the principal terms of such deconstruction and its polemical implications.[75] This widespread attitude of anglophone historians might depend on a semantic issue, since other languages generally use two terms (French: *féodalisme* and *féodalité*; German: *Feudalismus* and *Lehnswesen*; Italian: *feudalesimo* and *feudalità*) to distinguish between a broad notion of feudalism, covering different aspects of society, and a strict notion, generally referring to the system of fidelities tying lords and vassals.[76] The Italian tradition has proved quite receptive

Fils, 1748), ii, books 28, 30, 31; Céline Spector, *Montesquieu. Liberté, droit et histoire* (Paris: Michalon, 2010), 257–270.

72 Anthony Crubaugh, 'Feudalism' in *The Oxford Handbook of the Ancien Régime*, ed. William Doyle (Oxford: Oxford University Press, 2011), 219–235.

73 E.A.R. Brown, 'Feudalism', *Encyclopedia Britannica* https://www.britannica.com/topic/feudalism (last accessed February 12, 2021).

74 K. Pennington, 'Law, feudal'; D. Heirbaut, 'Feudal law'; P. Brancoli Busdraghi, *La formazione*. Mario Montorzi, however, has avoided the term *feudalism* (*feudalesimo*), deemed too modern a category: M. Montorzi, 'I giuristi e il diritto feudale', in *Il contributo italiano alla storia del Pensiero. Diritto* (Rome: Istituto della Enciclopedia Italiana, 2012), 35–42.

75 Fredric L. Cheyette, review of S. Reynolds, *Fiefs and Vassals* (Oxford, 1994), *Speculum*, 71/4 (1996), 998–1006; Stephen D. White, review of S. Reynolds, *Fiefs and Vassals* (Oxford, 1994), *Law and History Review*, 15/2 (1995), 349–355; C. Wickham, 'Le forme'; Richard Abels, 'The Historiography of a Construct: "Feudalism" and the Medieval Historian', *History Compass*, 7/3 (2009), 1008–1031; Charles West, *Reframing the Feudal Revolution: Political and Social Transformation Between Marne and Moselle, c. 800–c. 1100* (Cambridge: Cambridge University Press, 2013), 199–206.

76 D. Heirbaut, 'Feudal law'.

of the Reynoldsian model, despite some initial hesitation, especially from legal historians.[77] Still very influential is the legacy of Giovanni Tabacco, an early critic of classic feudalism, who adopted a revised version of the Ganshofian model somewhat purged of its constitutional elements.[78] Consequently, the term *feudalità* is generally used to describe not a model of society or political system but more specifically the system of fidelities which cemented, or was supposed to cement, the bonds within the military aristocracy.[79] More problems did arise in the French and German historiographies. In France, the strict term for feudalism (*féodalité*) is still common coin, being used to describe the political system developing in the kingdom during the high Middle Ages.[80] Reactions ranged from full-force attacks, especially by Eric Bournazel, one of the forefathers of the 'feudal revolution', to hesitant acceptance or constructive criticism.[81] Responses among German historians of *Lehnswesen* were at first even more problematic, but there, too, these initial difficulties led to developing productive discussion.[82]

Despite an initial mixed reception, Reynolds's model has eventually become a reference point for any study on fiefs, vassals, and feudalism. One of the points of general agreement is that historians should use the 'feudal' vocabu-

77 Only a few comments on *Fiefs and Vassals* can be found in *Il feudalesimo*. Whilst P. Brancoli Busdraghi, *La formazione*, firmly opposed the book, more recent legal scholarship has been more receptive, e.g., M. Ascheri, *The laws*, 98; M. Montorzi, 'I giuristi'.

78 G. Tabacco, 'Il feudalesimo', in *Storia delle idee politiche, economiche e sociali*, ed. Luigi Firpo, ii/2 (Turin: UTET, 1983), 55–115. His reception of *Fiefs and Vassals* was, however, enthusiastic: G. Tabacco, recensione a S. Reynolds, *Fiefs and Vassals* (Oxford, 1994), *Rivista storica italiana*, 108/1 (1996), 363–365.

79 G. Albertoni, L. Provero, 'Storiografia europea e feudalesimo italiano tra alto e basso medioevo', *Quaderni storici*, vol. 38, n. 112/1 (2003), 243–268.

80 Florian Mazel, *Féodalités (888–1180)* (Paris, 2010); *Les féodalites*, ed. J.-P. Poly, E. Bournazel (Histoire générale des systèmes politiques; Paris: PUF, 1998).

81 D. Barthélemy, 'La théorie féodale à l'épreuve de l'anthropologie (note critique)', *Annales. Histoire, Sciences Sociales*, 52/2 (1997), 321–341; Elisabeth Magnou-Nortier, 'La féodalité en crise', propos sur *Fiefs and Vassals* de Susan Reynolds, *Revue historique*, 296 (1996), 253–358; E. Magnou-Nortier, 'La "féodalité" méridionale a-t-elle existé? Réflexions sur quelques sources des xe–xiie siècles', in *Fiefs et féodalité dans l'Europe méridionale (Italie, France du Midi, péninsule ibérique) du xe au xiiie siècle*, ed. Pierre Bonnassie, Hélène Débax (Toulouse: CNRS/Université de Toulouse-Le Mirail, 2002), 167–201.

82 Otto Gerhard Oexle, 'Die Abschaffung des Feudalismus ist gescheitert', *Frankfurter Allgemeine Zeitung*, 116 (19 May 1995), 41; Johannes Fried, review of S. Reynolds, *Fiefs and Vassals* (Oxford, 1994), *German Historical Institute London Bulletin*, 19/1 (1997), 28–41; *Das Lehnswesen im Hochmittelalter. Forschungskonstrukte–Quellenbefunde–Deutungsrelevanz*, ed. Jürgen Dendorfer, Roman Deutinger (Ostfildern: Thorbecke, 2010); *Ausbildung und Verbreitung*.

lary more cautiously, as it is clear how those categories usually rest on modern notions rather than reflect what evidence offers. Recent studies on fiefs and feudal institutions tend indeed to ponder much more scrupulously than in the past the terminology of the sources so as to avoid misleading or anachronistic interpretations. In this sense, Reynolds's deconstruction can be inscribed within a broader tendency in medieval studies to reassess traditional interpretive models inspired by teleological paradigms or *ex-post* applications of modern notions.[83]

Recent comparative efforts gave rise to 'new landscapes of debate' on feudalism. They have shown that elements of classic feudalism, albeit with local variations, recurred in some regions more frequently and more regularly than in others—i.e., Catalonia, Languedoc, Lombardy, and Flanders.[84] Ganshof's heavy reliance on Flemish sources, therefore, may have been determining in shaping his notions of feudo-vassalic institutions and would partly explain the distortion of this model decried by Reynolds. It is also important to stress that three of these regions are located in Southern Europe, not exactly the heartland of the Frankish Empire which had been traditionally depicted as the cradle of feudalism—even though the diffusion of the term *feodum* in eleventh-century north-eastern Francia should perhaps be considered here.[85] This evidence would confirm the central role played in the making of feudalism, whether reality or legal theory, by regions that had been traditionally disregarded in the classic models.[86]

Furthermore, the idea arose that *feudalism* (or *Lehnswesen*, *féodalité*, *feudalità*) intended as a combination of elements of the Ganshofian or Blochian models—the existence of tenements called fiefs granted in exchange for service and fealty; some degree of formalisation of the terms of this exchange; a connection between personal obligations and the grant[87]—emerged only from the twelfth century onwards, alongside the slow construction of more solid and consistent legal frameworks. Such a late blooming of feudal institutions might support Reynolds's thesis that, insofar as they existed, these institutions were a

83 Limiting ourselves to feudalism, see for instance the critical historiographical essay: Alain Guerreau, 'Fief, féodalité, féodalisme. Enjeux sociaux et réflexion historienne', *Annales. Histoire, Sciences Sociales*, 45 (1990/1), 137–166.

84 *Das Lehnswesen im Hochmittelalter*; *Ausbildung und Verbreitung*; Steffen Patzold, *Das Lehnswesen* (Munich, 2012).

85 C. West, *Reframing*, 199–206.

86 *Structures féodales*; *Señores, siervos, vasallos en la Alta Edad Media. Actas de la XXVIII Semana de Estudios Medievales* (*Estella, 16–20 julio 2001*) (Pamplona: Gobierno de Navarra, 2002); *Fiefs et féodalité*.

87 J. Dendorfer, 'Zur Einleitung', in *Das Lehnswesen im Hochmittelalter*, 11–40, at 26.

by-product of the new professional and academic law. Nonetheless, a not irrelevant problem on this matter concerns what 'learned' or 'academic law' are supposed to mean.[88]

This issue brings us back to one of the most debated points of Reynolds's theses, which enabled both confrontation and comparative efforts in the past two decades: how to explain the emergence of a feudal terminology in several regions of Europe from the twelfth century onwards. According to Reynolds, this new vocabulary, somehow influenced by the LF, was applied to different customary realities that, for what concerns property law, had nothing to do with anything 'feudal'.[89] This point has been criticised by many. Stephen D. White reminded us how property law is itself a problematic notion and that in the high Middle Ages land can be effectively studied as 'an item of exchange and patronage that mediates political relationships'.[90] Eric Bournazel suggested that in that period *fiefs* represented the principal way of organising the political geography of northern France, a wide phenomenon which cannot be simply ascribed to the influence of professional lawyers—petty nobles did not read the LF, he argued.[91] Elisabeth Magnou-Nortier, too, viewed academic or professional law as an insufficient explanation for the broad diffusion of a feudal terminology.[92]

Historians of high medieval Europe have also expressed the need for thorough regional studies focused on the lexical changes emerging from evidence, which might allow a better understanding of the logic underlying the production of sources and the vectors (both social and intellectual) of such changes.[93] The relationships between fiefs, legal culture and scribal practice became a

88 K. Pennington, 'Learned Law, Droit Savant, Gelehrtes Recht. The Tyranny of a Concept', *Rivista internazionale di diritto comune*, 5 (1994), 197–209.

89 S. Reynolds, *Fiefs and Vassals*, 64, 478–479; S. Reynolds, 'Afterthoughts'; S. Reynolds, 'Fiefs and Vassals after Twelve Years', in *Feudalism: New Landscapes of Debate*, ed. Sverre Bagge, Michael H. Gelting, Thomas Lindkvist (Turnhout: Brepols, 2011), 15–26.

90 S.D. White, review, 353. S.D. White, 'The Politics of Exchange: Gifts, Fiefs, and Feudalism', in *Medieval Transformations. Texts, Power and Gifts in Context*, ed. Esther Cohen, Maike de Jong (Leiden: Brill, 2001), 169–188; S.D. White, 'Service for Fiefs or Fiefs for Service: The Politics of Reciprocity', in *Negotiating the Gift. Pre-modern Figurations of Exchange*, ed. Gadi Algazi, Valentin Groebner, Bernhard Jussen (Göttingen: Vandenhoeck & Ruprecht, 2003), 63–98.

91 E. Bournazel, *La royauté féodale en France et en Angleterre* (*xe–XIIIe siècles*), in *Les féodalités*, 389–510.

92 E. Magnou-Nortier, 'La féodalité en crise'.

93 *Das Lehnswesen im Hochmittelalter*; *Ausbildung und Verbreitung*; *Feudalism: New Landscapes*.

fruitful field of comparison.[94] More recent studies have suggested that Italian experts in feudal law, such as Obertus de Orto, who attended Frederick I's Diet of Roncaglia (1154), might have provided important impulses for the development of the Empire's constitutional law in the following century.[95] Therefore, the influence of Lombard feudal law (more precisely, of Lombard feudal lawyers) on the framework of the empire might have preceded any direct influence of the LF.

It has also been pointed out how Reynolds's explanation seems to imply a gap between 'learned' or 'academic law' and social practice—a hiatus that has been recently questioned.[96] The role of the LF has also been put into perspective in the German territories thanks to new comparisons with the so-called 'mirror' literature. The obvious starting point has been the *Sachsenspiegel* ('Saxon mirror', 1220–1234) by Eike von Repgow, a private law book which aimed at summarising and systematising the legal practices of Saxony, including feudal law (*Lehnrecht*), in a way which has been likened to Obertus's attempt for Milan.[97]

The function of legal texts—and their interpreters and users—in shaping a technical 'feudal' vocabulary has been simultaneously stressed and reduced. If it is certain that from the twelfth century onwards lawyers, officers, and scribes relied all the more often on law books, manuals, and formularies, it is equally likely that such notions (and the underlying practices) could have been transmitted through other channels than the LF. Steffen Patzold, for instance, proved through an insightful analysis of twelfth-century monastic chronicles that the spread of practices of patronage and land conveyance that were framed through a feudal vocabulary—in other terms, *Lehnswesen*—might be explained through the circulation of cultural models within the European political elite.[98]

The relationships between law, legal literature, social and political practice occupy, therefore, a primary role in present-day debates on feudalism. Whether one might or might not agree with Reynolds's theses, they have been a healthy reminder of how historians should never lose sight of the varying cultural

94 *Le vassal, le fief*.

95 J. Dendorfer, 'Roncaglia: Der Beginn eines lehnrechtlichen Umbaus des Reiches?', in *Staufisches Kaisertum im 12. Jahrhundert. Konzepte, Netzwerke, politische Praxis*, ed. Stefan Burkhardt, Thomas Metz, Bernd Schneidmüller, Stefan Weinfurter (Regensburg: Schnell und Steiner, 2010), 111–132; G. Dilcher, 'Das lombardische Lehnrecht'.

96 On this problem: A. Stella, 'Bringing'; A. Stella, 'In aliquibus'.

97 S. Patzold, *Das Lehnswesen*, 96–102; G. Dilcher, 'Das lombardische Lehnrecht', 89–90.

98 S. Patzold, 'Das Lehnswesen im Spiegel historiographischer Quellen des 12. und 13. Jahrhunderts', in *Ausbildung und Verbreitung*, 269–306.

and political contexts in which history is produced, and how those models are always liable to influence, or distort, our representations of the past. The trajectory depicted by the LF, from local custom to the *ius commune feudorum*, over centuries of European history is certainly one of the best possible reminders of these risks.

CHAPTER 4

# Notes to Translation

Even though the LF came to occupy a remarkable place in the most recent debates on feudalism, the only English translation currently available is the one offered by Lord Clyde in his edition of Sir Thomas Craig's *Jus Feudale* (1934), which today appears obsolete in many aspects.[1] This book aims therefore to provide on the one hand a useful Latin text and, on the other one, an up-to-date English translation based on Lehmann's 1896 edition of the *vulgata* (V1), the most widely diffused and cited among historians. As reference points, however, other editions have been considered: the *vulgata* edited by Eduard Osenbruggen in 1840 (V2) and translated into Dutch, in 2016, by Johannes E. Spruit and Jeroen Chorus, and the one offered in anastatic reprint by Mario Montorzi in 1991 (V3), which includes the *glossa ordinaria*.[2] To highlight textual developments and inconsistencies concerning some problematic passages, some manuscript evidence, regarding the intermediate recensions of the LF, have also been considered in the footnote apparatus to integrate and elucidate V1 and its translation.

In the Latin text, the principal divergences with V2 are reported in the footnotes; on some points, I have preferred V2 over V1, inserting the modifications in square brackets and explaining my choice in the footnote. V3 is taken into consideration to clarify some particularly doubtful passages and as the main reference for the *glossa ordinaria*. When the footnoted divergences imply a change in the overall meaning of the Latin text, the corresponding translation is footnoted in the English text. This means that, with some patience, the reader can also extrapolate the text and a working English translation of V2 too and, perhaps more importantly, the different rubrication, which is outlined in a synoptic table (see Appendix 4). Whilst V1 has book 1 subdivided into twenty-six

1 *The 'Jus Feudale' by Sir Thomas Craig of Riccarton, with an Appendix containing the Books of the Feus. A Translation by The Right Hon. James Avon Clyde* (Edinburgh and London: William Hodge, 1934). Read today, it is clear how Lord Clyde's translation tended to assign to the original text modern meanings and legal notions.

2 K. Lehmann, *Langobardisch*; *Corpus iuris civilis. Pars tertia novellas et reliqua continens*, ed. Eduard Osenbruggen (Leipzig: Baumgaertner, 1840); *Libri Feudorum*, transl. Johannes E. Spruit, Jeroen M.J. Chorus (Corpus Iuris Civilis. Tekst en Vertaling: XII Addendum; Amsterdam: Amsterdam University Press, 2016): a Dutch translation based on V2; M. Montorzi, *Diritto feudale*.

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titles and book 2 in fifty-seven, V2 has respectively twenty-eight and fifty-eight titles, as do V3 and, in general, the modern printed editions of the *vulgata* preceding Lehmann's.

Readers should be aware that these divergences are not the only ones, since slightly different versions of the *vulgata* were and are available.[3] Therefore, the texts that follow and the explanatory footnotes are far from representing or discussing an exhaustive exposition of all these variants. They are meant to be useful tools to explore the Lombard 'books of fiefs', their principal meanings and problematic points, to give a glimpse at how slight variations, sometimes relevant for the interpretation of the text, existed and continued to exist and be discussed throughout the modern era.

Appendices 1–3 include texts that have been chosen for their relevance in the feudal law tradition, as explained in the introduction. Whilst it is evident that the subdivision of the *capitula extraordinaria* into two separate batches attributed respectively to Ardizone and Baraterius does not reflect the actual tradition of those chapters, all perhaps collected by Ardizone in the early thirteenth century, I have opted to maintain this distinction for the sake of clarity, as they are still today generally cited following Lehmann's edition. Both the *capitula extraordinaria* by Ardizone (see Appendix 1) and Baraterius (see Appendix 2) are occasionally amended in light of V2 and ms. Vienna 2094, with all the additions, including the headings, in square brackets. Finally, Appendix 3 contains the much discussed *edictum de beneficiis* by Emperor Conrad II (1037), broadly described in the introduction, the translation of which rests on the edition available in the *Monumenta Germaniae Historica*.

Besides the synoptic table, which highlights the main divergences in the rubrication between V1, V2, and Ant., I believed it useful to provide a glossary to explain the meaning, potentially unclear, of some terms and expressions that an audience not acquainted with high medieval Italy and its sources might find difficult to understand or contextualise.

3 E.g., *Corpo del diritto civile*, ed. and transl. Francesco Foramiti, vol. IV (Antonelli: Venetiis 1844).

# *Libri feudorum, compilatio vulgata*: Book 1

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## [LF 1.1]
## Incipiunt consuetudines feudorum et primo de his qui feudum dare possunt et qualiter acquiratur et retineatur[1]

[pr.] Quia de feudis tractaturi sumus, videamus primo, qui feudum dare possunt. Feudum autem dare possunt archiepiscopus, episcopus, abbas, abbatissa, praepositus, si antiquitus fuerit consuetudo eorum, feudum dare. Marchio, comes,[2] qui proprie regni vel regis capitanei dicuntur, similiter feudum dare possunt.[3] Sunt et alii, qui ab istis feuda accipiunt, qui proprie regis vel regni valvassores dicuntur, sed hodie capitanei appellantur, qui et ipsi feuda dare possunt. Ipsi vero, qui ab eis accipiunt, minores valvassores dicuntur.

[§ 1] Et quia vidimus de personis, videamus, qualia prius habuerunt initia. Antiquissimo enim tempore sic erat in dominorum potestate connexum, ut, quando vellent, possent aufferre rem in feudum a se datam. Postea vero eo ventum est, ut per annum tantum firmitatem haberent, deinde statutum est, ut usque ad vitam fidelis produceretur. Sed cum hoc iure successionis ad filios non pertineret, sic progressum est ut ad filios deveniret, in quem scilicet dominus hoc vellet beneficium confirmare. Quod hodie ita stabilitum est, ut ad omnes aequaliter pertineat.

[*V2* 1.1.2] Cum vero Conradus Romam proficisceretur, petitum est a fidelibus, qui in eius erant servitio, ut et[4] lege ab eo promulgata hoc etiam ad nepotes ex filio producere dignaretur et, ut frater fratri sine legitimo herede defuncto in beneficio, quod eorum patris fuit, succedat.

[*V2* 1.1.3] Sin autem unus ex fratribus a domino feudum acceperit, eo defuncto sine legitimo herede, frater ei in feudum non succedat.[5] Quod etsi communiter acceperint, unus alteri non succedet,[6] nisi hoc nominatim dictum sit, scilicet ut uno defuncto sine legitimo herede alter succedat, herede vero relicto frater[7] removebitur.

[§ 2] [*V2* 1.1.4] Hoc autem notandum est, quod, licet filiae ut masculi patribus succedant legibus, a successione tamen feudi removentur, similiter et earum filii, nisi specialiter dictum fuerit, ut ad eas pertineat.

[1] *V2* Feudorum libri liber primus. De his, qui feudum dare possunt, et qualiter acquiratur, et retineatur. [2] *V2* Dux, marchio, comes. [3] *V2 omits* similiter feudum dare possunt. [4] *V2 omits* et. [5] *V2* frater eius in feudum non succedit. [6] *V2* succedit. [7] *V2* alter frater.

## [LF 1.1]
## Here begin the customs of fiefs, firstly concerning those who can give a fief and how a fief is to be acquired and retained[1]

[pr.] Since we are going to discuss fiefs, let us see in the first place who can give a fief. An archbishop, a bishop, an abbot, an abbess, and a provost can give a fief if it is their long-standing custom to give fiefs. A marquess and a count,[2] who are properly called the realm's or the king's 'capitanei', similarly can give a fief. There are also others, who receive fiefs from these, who are properly called the king's or the realm's 'valvasores', but today are called 'capitanei', and these as well can give fiefs. And they who receive fiefs from them are called lesser 'valvasores'.

[§ 1] Since we have seen the persons [who can give fiefs], let us now see what sort of origins fiefs earlier had. In oldest times, indeed, it was so bound up in the lords' power that they could take away when they wished a thing given by them in fief. Later, then, it came about that fiefs were secure for one year only. Thereafter, it was decided that this would be extended to the life of the vassal.[3] But since this would not belong to sons by right of succession, it developed in such a way that it would come to sons—that is, to [the son to] whom the lord wished to confirm this benefice. And today it is established that it belongs to all sons equally.

[*V2* 1.1.2] However, when Conrad [II] was setting out for Rome, he was asked by the vassals who were in his service that he consider it convenient, with the promulgation of a law, to extend this to grandsons in the male line, and that a brother is to succeed his brother who had died without a lawful heir in the benefice which was their father's.

[*V2* 1.1.3] If, however, one of the brothers receives a fief from the lord, and he dies without a lawful heir, his brother is not to succeed him to the fief, because even if they received it in common, one is not to succeed the other unless this has been expressly said: namely, that one having died without a lawful heir, the other is to succeed. But when an heir is left, the brother shall be excluded.

[§ 2] [*V2* 1.1.4] This should also be noted, that although according to the laws[4] daughters succeed their fathers just like males, they are, however, excluded from the succession to a fief, and likewise their sons, unless it is specifically said that the fief is not to belong to daughters.

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[1] *V2* The first book of the book of fiefs. Concerning those who can give a fief, and how it is to be acquired and retained. [2] *V2* A duke, a marquess, and a count. [3] *For 'fidelis', see Glossary.* [4] *I.e. Roman law and Lombard law.*

[§ 3] [*V2* 1.1.5] Hoc quoque sciendum est, quod beneficium ad venientes ex latere ultra fratres patrueles non progreditur successione secundum usum ab antiquis sapientibus constitutum, licet moderno tempore usque ad septimum gradum[1] sit usurpatum, quod in masculis descendentibus novo iure usque in infinitum extenditur.

[§ 4] [*V2* 1.1.6] Notandum est autem, quod illud beneficium, quod a regis capitaneis atque regis valvasoribus[2] aliis impenditur, proprie iure feudi censetur; illud vero, quod a minoribus in alios transfertur, non iure feudi iudicatur (aliter in curia Mediolanensis observatur);[3] sed quando voluerint, recte auferre queunt, nisi Romam in exercitu cum illis perrexerint[4] vel aliquid[5] propter feudum acceperint; tunc enim nisi restituto pretio auferre non possunt.

## [LF 1.2]
## De feudo guardiae vel gastaldiae

[pr.] Item illud, quod datur nomine gastaldiae vel guardiae et pro mercede alicuius rei, transacto anno potest iure aufferri etiam pretio pro eo dato non restituto, nisi ad certum tempus fuerit datum.

[§ 1] Si vero gastaldi aliquid nomine proprii feudi possident,[6] non valebunt propterea possessionem sibi defendere, nisi per pares curtis potuerint vel breve testatum probare, se, antequam gastaldi essent vel, postquam desierunt esse, investituram accepisse.

## [LF 1.3]
## Qui successores teneantur[7]

[pr.] Si vero archiepiscopus, episcopus, abbas, abbatissa[8] investituram eius feudi, quod alius detineat,[9] eo tenore alicui dederit, ut post decessum eius, qui possidet, habeat, et ante decesserit quam ille, qui feudum possidet, successores eorum non coguntur eam investituram facere vel confirmare, etiamsi pares curtis[10] adsint testes vel breve testatum inde sit, nisi ille, qui investitu-

[1] *V2* ad septimum geniculum. [2] *V2* atque regis vel regni valvasoribus. [3] *V2* licet aliter in curia Mediolanensis observetur. [4] *V2 adds here* quo casu in ius feudi transit et adiudicatur. [5] *V2* vel nisi aliquid. [6] *V2* possederint. [7] *V2* Qui successores feudum dare teneantur. [8] *V2* vel abbas, vel abbatissa. [9] *V2* quod alius detinebat. [10] *V2* pares eius curtis.

[§ 3] [*V2* 1.1.5] This also should be known, that a benefice does not proceed by succession to those who come from a collateral line beyond first cousins, according to the usage established by ancient experts, although in more recent times it became customary for this [to extend] to the seventh degree. By new law, this is extended ad infinitum with regard to male descendants.

[§ 4] [*V2* 1.1.6] It should be noted, moreover, that a benefice that is granted to others by the king's 'capitanei' or the king's 'valvasores'[1] is properly assessed by the law of the fief; however, that which is transferred to others by lesser ['valvasores'], is not judged by the law of the fief (it is observed otherwise in the court of Milan); but [its grantors] may rightly take it away when they wish, unless [the recipients] set out for Rome with them on a royal expedition;[2] or unless [its grantors] have received something in exchange for the fief, for then they cannot take it away unless payment is restored.

## [LF 1.2]
## Concerning the fief of castle-guard or 'gastaldia'[3]

[pr.] Also, that which is given as 'gastaldia' or castle-guard, or as the reward for something, with a year having past can by right be taken away, even with the payment given for it not restored—unless it was given for a fixed time.[4]

[§ 1] If, however, 'gastaldi' possess anything as their own fief, then they shall not be able to make a defence for themselves on account of possession, unless they can prove through the peers of [their lord's] court or a certified charter that they had received investiture before they were 'gastaldi' or after they ceased to be.

## [LF 1.3]
## Which successors are to be bound[5]

[pr.] If, however, an archbishop, a bishop, an abbot, or an abbess gives to anyone investiture of that fief which another holds,[6] on these terms, that he is to have it after the death of him who possesses, and [the grantor] dies before the person who possesses the fief, their successors are not compelled to make or confirm that investiture, even if the peers of [the grantor's] court are present

[1] *V2* by the king's 'capitanei' or the king's or the realm's 'valvasores'. [2] *V2* set out for Rome with them in a royal expedition, in which case it passes under the law of the fief and is assessed by it. [3] *The office of a 'gastaldus', see Glossary.* [4] *I.e., if a fief is expressly given for a fixed time, it cannot be taken away at the lord's will.* [5] *V2* What successors are to be bound to give a fief. [6] *V2* which another was holding.

ram acceperit, nomine eius feudi in possessionem missus sit eo consentiente, qui detinet. Sed si ille, qui feudum possidet, prius decesserit quam ille, qui investituram fecit, iure cogitur eam ratam habere.

[§ 1] Laici vero iisdem modis omnibus, quibus supra diximus, si aliis investituram dederint, heredes eorum, si rationibus claruerit, omnimodo eam adimplere compelluntur.

## [LF 1.4]
## De controversia investiturae[1]

[pr.] Si autem controversia inter dominum et fidelem de feudi investitura fuerit, quid iuris sit, videamus. Si[2] investitura facta fuerit coram paribus curiae[3] aut in brevi testato, recte eum, qui investitus est, cogitur dominus mittere in feudi possessionem. [*V2* 1.4.1] Si vero fuerit in possessione, et mota ei fuerit controversia a domino, ei defensio detur propter possessionem. Si autem non fuerit in possessione nec supradictis modis poterit probare, tunc illius erit defensio, qui investituram dicitur fecisse.

[§ 1] [*V2* 1.4.2] Si vero feudum aliquis habuerit, de quo nulla controversia est, et dixerit, se investituram alterius feudi accepisse ab eodem domino, nec in possessione fuerit nec praedictis rationibus probare potuerit, licet domini esset defensio ex ordine[,][4] tamen, quia aliunde vasallus est, remittitur domino ex aequitate defensio.

[§ 2] [*V2* 1.4.3] Cum autem quis dixerit, feudum ad se per successionem pertinere, asserendo illud esse paternum, si fuerit in possessione medietatis vel alicuius partis vel cambium proprietatis nomine illius feudi habuerit vel aliis iustis rationibus illud esse paternum probare potuerit, iure obtinebit.[5]

[§ 3] [*V2* 1.4.4] Item si vasallus[6] possederit castrum, quod dixerit se pro feudo tenere et e contra dominus per guardiam dixerit se ei dedisse, domini est probatio, et si poterit probare, tunc ille, qui tenet, debet domino restituere vel probare per pares curtis vel per breve testatum, postquam in guardiam suscepisset, se a domino pro feudo investituram accepisse; domino vero in probatione deficiente tunc illius erit defensio, qui possidet.

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[1] *V2* Si de investitura feudi controversia fuerit. [2] *V2* Et si. [3] *V2* curtis. [4] *V1, V2* esset defensio, ex ordine. [5] *V2 adds* Si vero probare non potuerit praedicto modo, dabitur ei defensio cum duodecim sacramentalibus. [6] *V2* Item si aliquis.

as witnesses or there is a certified charter concerning it. [This is so] unless he who receives investiture is put into possession of it as his fief with the current holder consenting. But if he who possesses the fief dies before he who made investiture, the latter is by right compelled to ratify it.

[§ 1] If, however, laymen give investiture to others in all the same ways about which we have spoken above, their heirs are in every respect compelled to fulfil it, if this is made clear by proofs.

## [LF 1.4]
## Concerning a dispute over investiture[1]

[pr.] Let us see what the law is if, however, there is a dispute between a lord and a vassal over investiture of a fief. If investiture has been made in the presence of the peers of the court or with a certified charter, the lord is rightly to be compelled to put him who is invested into possession of the fief. If, however, he has been in possession, and the dispute is brought against him by the lord, he is to be granted a defence [by oath][2] on grounds of possession. If, however, he is not in possession, nor able to make proof in the aforesaid ways, then defence [by oath] shall be his who is said to have made investiture.

[§ 1] [*V2* 1.4.2] If, however, anyone has a fief over which there is no dispute, and says that he received investiture of another fief from the same lord, and is neither in possession nor can make proof by the aforesaid means, even though defence [by oath] would be the lord's by ordinary procedure, nonetheless since the person is a vassal from another source, the lord is excused the defence [by oath] out of equity.

[§ 2] [*V2* 1.4.3] However, when anyone says that a fief belongs to him through succession by asserting it to be ancestral, he shall obtain it by right if he is in possession of half or any portion of it, or has received property in exchange for that fief, or can prove by other proper means that it is ancestral.[3]

[§ 3] [*V2* 1.4.4] Also, if a vassal[4] possesses a castle that he says he holds as a fief and, on the contrary, the lord says that he gave it to him by castle-guard, the lord is to make proof. And if he can make proof, then the one who holds it ought to restore it to the lord or prove through the peers of the [lord's] court or through a certified charter, that he had received investiture as a fief from the lord after he took it in castle-guard. If, however, the lord fails in his proof, defence [by oath] shall be his who possesses.

[1] *V2* If there is a dispute over investiture of a fief. [2] *For 'defensio', see Glossary.* [3] *V2 adds* If, however, he cannot make proof in the aforesaid way, he will be granted defence [by oath] with twelve oath-helpers. [4] *V2* Also, if anyone.

[§ 4] [*V2* 1.4.5] Similiter si aliquis possederit castrum vel aliam rem, et dominus dixerit, se pro pignore ei dedisse, e contrario ille dixerit se suscepisse[1] pro feudo, si potuerit dominus probare, quod ei pro pignore dedisset, tunc ille, qui tenet, domino restituet vel probet supradicto modo, se, postquam a domino pro pignore accepit, feudi nomine accepisse, et si dominus non potuerit probare, se nomine pignoris dedisse, erit defensio illius, qui possidet.

[§ 5] [*V2* 1.4.6] Si quis de manso uno feudi nomine investituram acceperit et dixerit, quod omne incrementum pertineat ad eum per investituram, si dominus reservaverit sibi aliquid in ipsa curte, tunc oportebit fidelem incrementi investituram per pares curtis vel per breve testatum probare. Sed si dominus in ipsa curte nihil sibi retinuit, tunc omne incrementum iure feudi fidelis obtinebit. Si vero fidelis in possessione incrementi fuerit, non oportebit investituram probare, sed iurare.

[§ 6] [*V2* 1.4.7] Rursus si aliquis acceperit investituram feudi 'cum omni incremento quod ei obveniret', et aliquid accreverit vivente eo, a quo acceperit,[2] ipsius erit; et si ille, qui investituram fecit, sine herede decesserit et feudum reversum fuerit ad eum, a quo ipse tenuerit, vel ad alium, quidquid post mortem eius, qui dedit, accreverit, ad eum pertinebit, ad quem regressum fuerit.

## [LF 1.5]
## Quibus modis feudum amittatur

[pr.] Quia supra dictum est, quibus modis feudum acquiratur et retineatur, nunc videamus, qualiter amittatur. Si enim dominus praelium campestre habuerit et vasallus eum morantem in ipso praelio dimiserit non mortuum, non ad mortem[3] vulneratum, feudum amittere debet.

[§ 1] Item si fidelis cucurbitaverit dominum, id est cum uxore eius concubuerit vel concumbere se exercuerit[4], vel si cum filia aut cum nepte ex filio aut cum

[1] *V2* accepisse. [2] *V2* a quo accepit. [3] *V2* nec ad mortem. [4] *V2* Item si fidelis cucurbitaverit dominum, id est cum uxore eius concubuerit, vel id facere laboraverit, aut cum uxore eius turpiter luserit.

[§ 4] [*V2* 1.4.5] Likewise, if anyone possesses a castle or another property, and the lord says that he gave it to him as a pledge, and he on the contrary says that he received it as a fief, if the lord can prove that he gave it to him as a pledge, then he who holds it is to either restore it to the lord or prove in the aforesaid way that he received it as a fief after he had received it as a pledge from the lord. And if the lord cannot prove that he gave it to him as a pledge, defence [by oath] shall be his who possesses.

[§ 5] [*V2* 1.4.6] If anyone receives investiture of one estate[1] as a fief and says that every increment belongs to him by the investiture, if the lord reserves to himself something in that 'curtis'[2] [in which the estate is situated], then the vassal shall need to prove the investiture of the increment, through the peers of the court or through a certified charter. But if the lord did not retain anything for himself in that 'curtis', then, by the law of the fief, the vassal shall obtain the whole increment.[3] If, however, the vassal is in possession of the increment, he shall not need to prove the investiture, but just swear.

[§ 6] [*V2* 1.4.7] Again, if anyone receives investiture of a fief 'with every increment that will come to it', and anything accrues while he from whom he received [it] is alive, it shall be his. And if he who made investiture dies without heir, and the fief has reverted to him from whom he held it or to someone else, whatever accrues after the death of him who gave [it] shall belong to him to whom [the fief] has reverted.

## [LF 1.5]
## In what ways a fief is to be lost

[pr.] Since we have said above in what ways a fief may be acquired and retained, let us now see how it may be lost. Therefore, if a lord fights on the battlefield and his vassal deserts him while engaged in that battle neither dead nor mortally wounded, he ought to lose the fief.

[§ 1] Also, if a vassal cuckolds the lord, i.e. he goes to bed with his wife, or strives to go to bed with her,[4] or goes to bed with the lord's daughter, his son's

[1] *For 'mansus', see Glossary.* [2] *I.e., a signorial district, a manor. On the various meanings of 'curtis', or 'curia', see Glossary.* [3] *The chapter envisages a dispute over an increment to an enfeoffed estate ('mansus'), with the vassal claiming it to be his. If the lord keeps any rights, presumably signorial rights, in the district ('curtis') in which the estate is situated, then the vassal is to prove that any increment was granted to him according to the terms of the investiture; if the lord has no right in the 'curtis', then any increment to the enfeoffed estate belongs to the fief-holder.* [4] *V2* Also, if a vassal cuckolds the lord, i.e., he goes to bed with his wife, or attempts to do it, or plays in an indecent manner with her.

nupta filio aut cum sorore domini concubuerit—haec ita obtinent si in domo domini maneat—iure feudum amittere censetur.

[§ 2] Similiter si dominum assalierit vel castrum domini sciens[1] dominum vel dominam ibi esse.

[§ 3] Item si fratrem suum occiderit vel nepotem, id est filium fratris.

[§ 4] Aut si libellario nomine amplius medietate[2] dederit aut pro pignore plus medietate obligaverit, ita ut transactum permittat, vel dolo hoc fecerit,[3] feudi amissione mulctabitur.

[§ 5] His omnibus casibus feudum ad dominum revertitur.

[§ 6] Rursus si fidelis minus medietate libellario nomine dederit et sine herede decesserit, et feudum ad dominum redierit vel, postquam ad libellum dederit vel pignori obligaverit, domino refutaverit, tunc ille, qui ab eo acceperit, nullo iure adversus dominum se tueri poterit.

[§ 7] Praeterea si ille, ad quem feudum per successionem iure obvenire debet, consenserit eos investire, ad quos secundum morem et rectum ordinem[4] non pertinet, nullo modo ad eum repetendum regressum habet.

[§ 8] Item si fuerint duo fratres et unus investituram feudi acceperit, si postea feudum cum fratre diviserit et ille, qui partem accepit,[5] postea plus medietate vendiderit et sine herede legitimo decesserit, feudum ad dominum revertitur.

[§ 9] Item si quis feudum habuerit in curte domini sui, non poterit ipsum feudum in aliqua parte libellario nomine alicui sine consensu domini sui dare vel pignori obligare. Similiter si extra curtem detinuerit et dominus districtum habuerit vel alium honorem, et[6] si alienaverit sine domini voluntate, iure ad dominum revertitur.

## [LF 1.6]
## Episcopum vel abbatem vel abbatissam feudum dare non posse[7]

[pr.] Item si episcopus vel abbas vel abbatissa vel dominus plebis feudum dederit de rebus ecclesiarum, quae eis subiectae sunt et tituli vocantur, nullum

[1] *V1 adds a comma after* sciens. [2] *V2* amplius medietate feudi. [3] *V2* vel dolo hoc egerit. [4] *V2* ad quos secundum rectum morem. [5] *V2* ille, qui feudi partem accepit. [6] *V2 omits* et. [7] *V2* Episcopum, vel abbatem, vel abbatissam, vel dominum plebis feudum dare non posse.

daughter, his son's wife, or his sister—these things apply in this way if she lives in the lord's house—it is determined by law that he loses the fief.

[§ 2] Likewise, if he attacks the lord or the lord's castle, knowing that the lord or the lady is there.

[§ 3] Also, if he kills his own brother or nephew, i.e. his brother's son.

[§ 4] Or if he gives more than half his fief by lease, or he ties up in pledge more than half in such a way as to allow its transfer, and he does this with deceit, he shall be punished by loss of the fief.

[§ 5] In all these cases, the fief reverts to the lord.

[§ 6] Again, if a vassal gives by lease less than half [his fief], and dies without heir, and the fief goes back to the lord, or if he renounces [the fief] to the lord after he gave it by lease or tied it up in pledge, then by no right can he who received it from him defend himself against the lord.

[§ 7] Furthermore, if the one to whom the fief ought by right to come through succession agrees to invest those to whom it does not belong according to practice and rightful procedure,[1] in no way has he a claim to seek its recovery.

[§ 8] Also, if there are two brothers and one receives investiture of a fief, if afterwards he divides the fief with his brother, and he who has received a portion then sells more than half [the fief] and dies without lawful heir, the fief reverts to the lord.

[§ 9] Also, if anyone has a fief within a 'curtis'[2] of his lord, he can neither give that fief in any portion by lease to anyone without his lord's approval nor tie it up in pledge. Likewise, if he holds it outside his lord's 'curtis' but the lord has the power of distraint or some other jurisdiction over it, if he alienates it without the lord's approval, it reverts to the lord by right.[3]

## [LF 1.6]
## That a bishop, an abbot, or an abbess cannot give a fief[4]

[pr.] Also, if a bishop, an abbot, an abbess, or the lord of a 'plebs'[5] gives a fief out of the properties of the churches that are subjected to them and

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[1] *V2* according to rightful practice. [2] *I.e., a signorial district. See Glossary.* [3] *As the 'glossa ordinaria' (gl. 'Curtem') suggests, this chapter envisages three situations: (1) the fief is part of a 'curtis' that the lord controls directly, i.e. over which he exerts private and public powers; (2) the fief is not situated within a signorial district, but the lord exerts some power over it—royal grants often conferred full rights over small groups of farms or peasant holdings without granting an entire district; (3) the fief is a piece of land over which the lord exerts only ownership rights. Only in the third case the vassal can lease it or alienate it without the lord's approval.* [4] *V2* That a bishop, an abbot, an abbess, or the lord of a 'plebs' cannot give a fief. [5] *For 'dominus plebis' see Glossary.*

habet vigorem secundum hoc, quod constitutum est a Papa Urbano in sancta synodo, hoc est illud, quod post eius decretum datum fuerit; quod autem ante datum fuerit, firmiter permanere debet.

[§ 1] Idem iuris est, si praepositus[1] vel alia ecclesiastica persona, quae antiquitus non sit solita in feudum dare, scilicet ut, quod dederit, de iure non valeat.

[§ 2] Quin etiam si quis eo tenore feudum acceperit, ut eius descendentes, masculi et feminae, illud habere possint, relicto masculo ulterius feminae non admittuntur.

[§ 3] Mutus feudum retinere non potest, scilicet qui nullo modo loquitur, sed si feudum fuerit magnum, quo ei ablato se exhibere non valeat, tantum ei relinqui debet, unde possit se retinere.[2]

[§ 4] Et his omnibus casibus feudum amittitur et ad dominum revertitur.

## [LF 1.7]
## De natura feudi

[pr.] Natura feudi haec est, ut si princeps investierit capitaneos suos de aliquo feudo, non potest eos disvestire[3] sine culpa, id est marchiones et comites et ipsos, qui proprie hodie appellantur capitanei.

[§ 1] Idem est, si investitura sit facta a capitaneis et maioribus valvasoribus, qui improprie hodie appellantur capitanei. Si vero facta fuerit a minoribus vel minimis valvasoribus, aliud est. Tunc enim possunt disvestiri[4] non habita ratione culpae, nisi fecerint hostem Romae—tunc enim idem est in minimis quod in maioribus valvasoribus—vel nisi emerint[5]—tunc enim pretium restituendum est secundum antiquum et rationabilem usum. Moderni autem non ita subtiliter cernentes dicunt, idem observandum in minimis quod dictum est in maioribus.[6]

## [LF 1.8]
## De successione feudi

[pr.] Sequitur de successione feudi videre. Si quis igitur decesserit filiis et filiabus superstitibus, succedunt tantum filii aequaliter vel nepotes ex filio in loco sui patris nulla ordinatione defuncti in feudo manente vel valente.

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[1] *V2* si sit praepositus. [2] *V2* unde se sustinere possit. [3] *V2* devestire. [4] *V2* devestiri. [5] *V2* vel nisi emerint feudum. [6] *V2* in maioribus valvasoribus.

are called 'titles', this has no effect according to what was established by Pope Urban in the holy synod.[1] This concerns what has been given after his decree: however, what was given before ought to remain securely.

[§1] The law is the same for a provost[2] or any other ecclesiastical person who has not formerly been accustomed to give in fief: that is, that what they give has no effect by law.

[§2] Moreover, if anyone receives a fief on these terms, that both his male and female descendants can have it, when a male is left females are no longer admitted.

[§3] A mute person—that is, he who does not speak in any way—cannot keep a fief. But if the fief is large and after it is taken away from him he cannot support himself, enough ought to be left to him wherefrom he can maintain himself.

[§4] And in all these cases the fief is lost and reverts to the lord.

## [LF 1.7]
## Concerning the nature of a fief

[pr.] The nature of a fief is this, that if the prince has invested his 'capitanei'—i.e. marquesses, counts, and those who today are properly called 'capitanei'—with any fief, he cannot dispossess them without fault [on their part].

[§1] The same applies if an investiture has been made by 'capitanei' and greater 'valvasores'—who today are improperly called 'capitanei'. If, however, it has been made by lesser or smallest 'valvasores', it is different, for then [holders] can be dispossessed without regard for the question of any fault, unless they have joined an expedition to Rome, for then the same applies for the smallest 'valvasores' as for the greater; or unless they bought [the fief], for then, by long-standing and reasonable usage, the price paid must be restored. The moderns, however, who do not distinguish so subtly, say that what is said in respect to the greater must be observed in respect to the smallest.

## [LF 1.8]
## Concerning succession to a fief

[pr.] Now it follows that we look into the succession to a fief. Therefore, if anyone dies while his sons and daughters survive, sons alone succeed in equal portions, or grandsons in the male line in place of their father, since no testamentary disposition of the deceased has standing or effect in respect to a fief.

[1] *Decr. C. 17, q. 7, c. 2: Council of Clermont* (*1095*). [2] *V2* The law is the same if he is a provost.

[§1] Hoc quoque observatur, ut si frater meus alienaverit partem suam feudi vel fecerit investiri filiam suam, si moriatur sine herede masculo, nihilominus revertitur ad me. Et olim observabatur usque ad quartum gradum tantum secundum quosdam, hoc ideo quia postea non vocatur feudum paternum. Alii autem dicunt usque ad septimum gradum. Filia vero non succedit in feudo, nisi investitura fuerit facta in patre, 'ut filii et filiae succedant in feudum'—tunc enim succedit filiis non exstantibus[1]—vel nisi investitae fuerint de feudo paterno. In alio vero feudo, quod habuit initium tantum a fratribus, non succedit unus alteri sive in una investitura sive in duabus investituris,[2] nisi hoc fuerit dictum expressim, ut alter alteri succedat.

## [LF 1.9]
## Hic potest esse titulus qui successores teneantur[3]

Si quis investitus fuerit de alieno feudo 'post mortem eius' vel si fuerit[4] investitus sub conditione aliqua vel tempore de quo[5] nullus erat investitus, sive praemoriatur tenens feudum sive investitor sive investitus, investitor et heredes investitoris tenentur investito et[6] heredi eius veniente tempore vel conditione, licet alii dicant, si moriatur investitus ante quam tenens feudum vel ante conditionem exsistentem vel ante tempus, quod heredes eius non debeant investiri. Nam si quis fuerit investitus pure de alieno feudo, non valet investitura[7]. Hoc ita est, nisi fuerit facta ab aliqua ecclesiastica persona; tunc enim si moriatur[8] investitor ante quam feudum tenens vel conditio vel tempus existat, non obligatur successor illius, et hoc probatur per legem Lotharii de precariis[9], et hoc intelligendum est de vasallis, qui feudi successionem non habent.

[1] *V2* tunc enim succedit filia filiis non exstantibus. [2] *V2* sive una investitura, sive duabus. [3] *V2* Qui successores teneantur. *The form of this heading in V1 reflects the doubts of the author of the rubrication, who connects this title to LF 1.3, 'Qui successores teneantur'* (*'Which successors are to be bound'*). [4] *V2* vel si quis fuerit. [5] *V2* vel tempore quo. [6] *V2* vel. [7] *V2* non valet habita investitura. [8] *V2* praemoriatur. [9] *Lomb. 3.10.2*

[§1] It is also observed that if my brother alienates his portion of a fief,[1] or has his daughter invested with it, and dies without male heir, it nonetheless reverts to me. And, according to some, this was once observed only up to the fourth degree, for the reason that a fief is not called ancestral beyond that. Others, however, say up to the seventh degree. A daughter, however, does not succeed to a fief unless the investiture was made to the father so that 'sons and daughters may succeed to the fief': for then she succeeds in the absence of sons; or unless they[2] were invested with the ancestral fief. However, in another fief which has originated only from brothers, one does not succeed the other regardless of whether [it was granted] in one investiture or in two investitures,[3] unless it is expressly stated that one is to succeed the other.

## [LF 1.9]
## Here the title can be 'which successors are to be bound'[4]

If anyone has been invested with someone else's fief 'after his death', or if anyone has been invested pending a certain condition, or at a set time, [with a fief] concerning which nobody has been invested, regardless of whether the person holding the fief, the person who invested, or the person who was invested dies first, the person who invested and his heirs are bound to the person who was invested or his heir when the time comes or the condition occurs. However, others say that if the person who was invested dies before the person holding the fief, or before the occurrence of the condition, or before the time comes, his heirs ought not to be invested, for investiture has no effect when one is invested unconditionally of someone else's fief.[5] This is so unless investiture has been made by some ecclesiastical person, for then if the person who invested dies before the person holding the fief, or before the condition occurs, or before the time comes, his successor is not bound. This is proved by the decree of Lothair concerning precarial grants.[6] And this is to be understood in respect to vassals who do not have succession to a fief.[7]

[1] *I.e., an ancestral fief, to which all coheirs have claims.* [2] *I.e., the daughters.* [3] *I.e., in one investiture to both or in two distinct investitures.* [4] *V2* Which successors are to be bound. [5] *This dissenting opinion holds that the right to claim such investiture at the occurrence of the condition ought not to extend to the grantee's heirs, should the grantee die before the current holder. This stands on the grounds that only unconditional investitures can be transmitted to heirs.* [6] *Lomb. 3.10.2. For precarial grant and 'precaria', see Glossary.* [7] *I.e., this sort of investiture holds only if the current fief-holder's heirs have no succession to the fief.*

## [LF 1.10]
## De contentione inter dominum et vasallum de investitura feudi

[pr.] Si fuerit contentio inter dominum et fidelem de investitura feudi, per pares curiae dirimatur. Alii enim testes, etsi idonei sunt, tamen[1] admittendi non sunt. Inopia tamen probationum dirimatur per religionem clientuli possessoris feudi vel cum 12 sacramentalibus secundum quosdam. Ceterum si dominus possideat, etiam per suum iusiurandum cum 12 sacramentalibus dirimatur. Hoc ita, nisi clientulus sit gastaldus vel actor domini; tunc enim tantum suae, id est domini, religioni statur, nisi habeat testes pares idoneos. Nam aliquando malignando multa bona auferuntur domino hoc modo et hoc colligitur per legem, quae est in titulo de acquisitione actorum regis in Lombarda.[2] Idem dicendum est de guardia.

[§1] [*V2* 1.11][3] Similiter si quis voluerit dicere de pignore sibi dato se investitum esse, non credatur suo iuramento, sed testibus idoneis paribus domus.[4] Insuper sciendum est, feudum guardiae et gastaldiae quacunque hora vult auferri posse a domino, scilicet post annum.

## [LF 1.11]
## [*V2* 1.12] De contentione inter me et dominum de portione feudi fratris mei[5]

Si contentio fuerit inter me et dominum de portione feudi fratris mei defuncti dicendo paternum esse,[6] ille vero minime, tanquam habuerim partem meam, sive possideo sive alienavi, dabitur mihi iusiurandum, scilicet patrem meum iure investitum fuisse, licet non possideam portionem fratris mei. Si vero nullam partem habuero illius feudi, nec mihi nec domino dabitur iusiurandum, nisi propter supradictam rationem domino, non ut ego propter hoc aliud meum feudum amittam.[7]

[1] *V2 omits* tamen. [2] *Lomb. 2.17.1. V2 omits* in Lombarda. [3] *V2 tit.* De pignore dato feudo quid iuris sit. [4] *V2* paribus domus vel curiae. [5] *V2* De portione feudi fratris mei defuncti. [6] *V2* paternum esse et sic me debere succedere. [7] *V2 adds* Si tamen vasallus poterit probare paternum fuisse, sive possideat sive non, obtinebit; alioqui nisi probet paternum fuisse, vel nisi possideat, dominus obtinebit.

## [LF 1.10]
## Concerning a dispute between a lord and a vassal over investiture of a fief

[pr.] If there is a dispute between a lord and a vassal over investiture of a fief, it is to be resolved by the peers of the [lord's] court, for other witnesses, even if they are suitable, nonetheless should not be admitted. However, in the absence of proofs, it is to be resolved through an [individual] oath[1] of the vassal[2] possessing the fief or, according to some, with twelve oath-helpers. But if the lord possesses [what is disputed], it is to be resolved through his swearing with twelve oath-helpers. This is so unless the vassal is a 'gastaldus'[3] or an agent of the lord, for then just the [individual] oath of the lord has standing, if the vassal does not have suitable peer witnesses; for many goods are taken from lords this way, sometimes by malice, and this is gathered from a law which is in the Lombarda under the title 'Concerning the acquisition of the king's agents' (Lomb. 2.17.1). The same should be said concerning castle-guard.

[§ 1] [*V2* 1.11][4] Likewise, if anyone wants to say that he has been invested with a pledge given to him, one is not to trust his oath but suitable witnesses who are peers of the lord's household.[5] Furthermore, it should be known that a fief of castle-guard and of 'gastaldia'[6] can be taken away by the lord at whatever moment he wishes—that is, after one year.

## [LF 1.11]
## [*V2* 1.12] Concerning a dispute between me and the lord over my brother's portion of a fief[7]

If there is a dispute between me and the lord over my deceased brother's portion of a fief, which I say is ancestral[8] while he [says] it is not, as long as I have had my portion, whether I possess it or have alienated it, it shall be for me to swear, namely that my father was rightly invested, even though I do not possess my brother's portion. But if I have had no portion of that fief, it shall be for neither me nor the lord to swear—unless for the lord, for the aforementioned reason,[9] but not so that I may lose my other fief for that reason.[10]

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[1] *For this peculiar use of 'religio' as oath: see Glossary.* [2] *For 'clientulus' as 'vassal': see Glossary.* [3] *For 'gastaldus', see Glossary.* [4] *V2 tit.* What is the law concerning a pledge given in fief. [5] *V2* of the lord's household or court. [6] *I.e., the office of 'gastaldus': see Glossary.* [7] *V2* my deceased brother's portion of a fief. [8] *V2* and I say it is ancestral hence I ought to succeed. [9] *I.e., LF 1.10.* [10] *V2 adds* If, however, the vassal can prove that it was ancestral, whether he possesses or not, he shall obtain it; otherwise, if he does not prove that it was ancestral, or if he does not possess it, the lord shall obtain it.

## [LF 1.12]
## [*V2* 1.13] De alienatione feudi

[pr.] Si clientulus voluerit partem sui[1] feudi alienare, id est medium, sine domini voluntate, poterit hoc facere, ulterius progredi non potest secundum iustum et verum usum, alioquin et feudum amittit et non valebit, quod factum est. Quod dictum est alienare, intelligas de libello. Huic consuetudini derogatum est per legem Lotharii.[2] Mediolanenses vero irrationabiliter considerantes dicunt, clientulum etiam alienare posse totum et sine domini voluntate. Inde potest praesumi, si clientulus fecerit libellum in perpetuum de feudo suo alicui ecclesiae, non valet,[3] ideo scilicet, quia nunquam reversurum esset[4] ad dominum, cum ecclesia non desinat esse heres.

Quod observandum est in privato ex natura perpetui libelli. Sed diversum observatur in ecclesia quam in privato. Ecclesia enim, cultrix et auctrix iustitiae, non patitur contra iustitiam aliquid fieri in se vel in alterum, privatus vero saepe obviat iustitiae.

Et si clientulus fecerit libellum vel aliud de medietate feudi sine domini voluntate, eo mortuo sine legitimo herede masculo—quod verbum ita intelligendum est in feudo id est sine filio masculo—revertitur feudum ad dominum. Si vero cum domini voluntate totum vel medium alienaverit, stabilis permaneat alienatio (fratri vero vel nepoti alienatio per libellum facta).[5]

[§ 1] In feudo[6] comitatus vel marchiae vel aliarum dignitatum non est successio secundum rationabilem usum, sed hodie est usurpatum.[7]

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[1] *V2* suam. [2] *V2 See* LF *2.52.1. This reference is absent in Ant.* [3] *V2* non valere. [4] *V2* sit. [5] *V2* fratri vero vel nepoti per libellum facta alienatio, etiam sine voluntate domini. *The discrepancy between V1 and V2 is here substantial. V1 suggests that* etiam sine voluntate domini, *which appears at the beginning of the gloss 'per libellum facta', was inserted in the text proper in the fifteenth century and therefore omits it. V3 agrees with V1, as well as mss.* SG *(f. 95$^{a}$); Salz. (f. 53$^{ra}$); Vat1 (f. 253$^{vb}$).*
[6] *V2* Item in feudo. [7] *V2* hodie hoc est usurpatum.

## [LF 1.12]
## [*V2* 1.13] Concerning alienation of a fief

[pr.] If a vassal[1] wants to alienate a portion of his fief, i.e. half, he can do this without the lord's consent. By just and true usage, he cannot proceed further, otherwise he loses the fief and what has been done shall have no effect. The expression 'to alienate' should be understood as 'by lease'. This custom was modified by a decree of Lothair.[2] But the Milanese, against good reason, say that the vassal can also alienate the whole, even without the lord's consent. For this reason, it can be presumed that if the vassal makes a lease in perpetuity to some church regarding his fief, this has no effect because it is never going to revert to the lord, since the church does not cease to be an heir.[3]

This should be observed in respect to private persons[4] because of the nature of perpetual lease. However, it is observed differently in relation to the church as opposed to private persons, for the church, a nurturer and originator of justice, does not suffer that anything be done contrary to justice, against itself or against another. But a private person often opposes justice.

And if a vassal makes a lease or something else regarding half of a fief without the lord's consent, after he dies without a lawful male heir—which expression, in respect to a fief, is to be understood as 'without a male child',—the fief reverts to the lord. But if he alienates all the fief, or half, with the lord's consent, the alienation is to stand—an alienation, however, made through a lease to a brother or a nephew.[5]

[§1] According to reasonable usage, there is no succession to a fief consisting of a county, a march, or other high offices, although today this has become customary.

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[1] *'Clientulus' (see Glossary) here and in the entire title 1.12.* [2] *See LF 2.52.1.* [3] *In which case, the lease would be no different from a sale. A perpetual lease 'ad libellum' was meant to be renewed, or possibly revoked, at the lessee's death, something that would never happen if granted to a church.* [4] *The term 'privatus' is opposed to 'ecclesia', with the meaning of 'lay person'.* [5] *V2* an alienation, however, made through lease to a brother or a nephew stands even without the lord's consent.

### [LF 1.13]
### [*V2* 1.14] De feudo marchiae, ducatus et comitatus[1]

[pr.] De marchia vel ducatu vel comitatu vel aliqua regali dignitate si quis investitus fuerit per beneficium ab imperatore, ille tantum debet habere; heres enim non succedit ullo modo, nisi ab imperatore per investituram acquisierit.

[§ 1] Si capitanei vel valvasores maiores vel minores investiti fuerint de beneficio, filii vel nepotes ex parte filiorum succedunt. Si vero unus ex his filiis vel nepotibus sine descendentibus masculini sexus heredibus mortuus fuerit, praedicti fratres et[2] nepotes per investituram patris et avi in beneficium succedunt; et similiter intelligendum est in consobrinis.

[§ 2] Si duo fratres simul investiti fuerint de beneficio novo et non de paterno, si unus eorum sine descendentibus masculini sexus mortuus fuerit, dominus succedit, non frater, nisi pactum [fuerit in investitura, quod frater fratri succedat. Per pactum enim frater succedit, non dominus. Quod diximus de fratribus, ut unus alii succedat per pactum, idem dicendum est de filiabus, si] hoc [pactum][3] conciliet, sic et[4] per pactum filiae succedunt.

### [LF 1.14]
### [*V2 1.15*] An maritus succedat uxori in beneficium

Si femina habens beneficium moriatur, nullo modo succedit in beneficium maritus, nisi specialiter investitus fuerit. Et si ipsa femina filios dimiserit, dicunt quidam, filios non debere succedere in beneficium matris, nisi specialiter sit dictum vel investiti fuerint, quia secundum usum regni beneficium vocatur paternum et[5] non maternum. Sed secundum aequitatem dicamus, filios debere

[1] *V2* De feudo marchiae, vel ducatus, vel comitatus. [2] *V2* vel. [3] *The text transmitted by V1 seems incomplete and perhaps derives from a homeoteleuton caused by the word* pactum. *V2 and V3 confirm this mistake, and at least two manuscripts transmitting an intermediate recension of the LF partly conform to them: SG (f. 95$^{b}$) and Salz. (f. 53$^{rb}$) only omit 'si hoc pactum conciliet, et sic per pactum filiae succedunt'. For this reason, I opted for transcribing and translating the text of V2.* [4] *V2* et sic. [5] *V2 omits* et.

### [LF 1.13]
### [*V2* 1.14] Concerning the fief of a march, a duchy, and a county

[pr.] If anyone is invested through benefice by the emperor with a march, a duchy, a county, or any other royal office, only he ought to have it for in no way does the heir succeed, unless he acquires it from the emperor through investiture.

[§ 1] If 'capitanei' or greater or lesser 'valvasores' have been invested with a benefice, sons and grandsons in the male line succeed. But if one of these sons or grandsons has died without descending heirs of the male sex, the aforesaid brothers, and grandsons [descending from these brothers], succeed to the benefice through their father's or grandfather's investiture. The same is to be understood for cousins.

[§ 2] If two brothers at once have been invested with a new benefice, not an ancestral one, if one of them dies without descendants of the male sex, the lord succeeds, not the brother, unless there was an agreement in the investiture that brother is to succeed brother; for by [that] agreement the brother, not the lord, succeeds. And what we have said concerning brothers, i.e. that one succeeds the other by agreement, should be likewise said concerning daughters: if an agreement provides for this, in such a way daughters too succeed by agreement.[1]

### [LF 1.14]
### [*V2 1.15*] Whether a husband may succeed his wife to a benefice

If a woman who has a benefice dies, in no way does her husband succeed her to the benefice unless he has been specifically invested. And if that woman leaves sons, some say that the sons ought not to succeed to the mother's benefice, unless this has been specifically said, or they have been invested, because, by the usage of the realm, a benefice is called 'ancestral' and not 'maternal'.[2] However, let us say that [her] sons ought to succeed by equity. We say this

[1] *I.e., when two brothers are jointly invested with a new benefice, not an ancestral one, if one of them dies without descending male heirs, the lord succeeds, not the brother, unless an agreement provides for it. In the same way, daughters also succeed by agreement.* [2] *The Latin text opposes 'paternum'* (*ancestral, lit. 'paternal'*) *to 'maternum'* (*i.e. 'maternal'*) *and therefore stresses the preference reserved to males in succeeding.*

succedere. Hoc dicimus de capitaneis et de maioribus et minoribus valvasoribus.[1] De minimis autem, id est de his, qui beneficium tenent a minoribus valvasoribus, sic servetur.[2]

### [LF 1.15]
### [*V2 1.16*] De feudis datis minimis valvasoribus[3]

Si minores valvasores beneficium tollere voluerint minimis, liceat[4] eis, excepto si beneficium vendiderint eis. Si vero pretium de beneficio acceperint, tunc aut pretium reddant aut beneficium dimittant.

### [LF 1.16]
### [*V2 1.17*] Quibus modis feudum amittatur

Si capitanei vel maiores valvasores qui hodie vocantur capitanei, licet improprie dicantur, [vel] minores,[5] seniores in bello dimiserint, vel si credentiam ad eorum damnum scienter manifestaverint, si valvasores seniorum uxores adulteraverint, si scienter seniores assalierint sive similes culpas commiserint, beneficio carere debent.

### [LF 1.17]
### [*V2 1.18*] Apud quem vel quos controversia feudi definiri debeat[6]

Si contentio fuerit de beneficio inter capitaneos, coram imperatore definiri debet. Si vero contentio fuerit inter minores valvasores et maiores de beneficio, in iudicio parium definiatur vel per iudicem curtis. Si aliquis de capitaneis vel de maioribus valvasoribus vel de minoribus suum beneficium sive totum sive partem alienaverit, et ipse vel heres eius sine herede decesserit, quia beneficium senioribus aperitur, totum quod fecit, revocari debet.

[1] *V2* et de maioribus valvasoribus et de minoribus. [2] *V2 adds* sicut inferius dicemus. [3] *V2 adds* quid iuris sit. [4] *V2* licet. [5] *I follow here V2, in square brackets, which reflects Ant. and provides a clearer sentence than V1 or V3. The manuscripts I consulted do not clarify the matter and, on the contrary, add to the text's inconsistency. For instance,* SG (*f. 95*[b]): Sic capitanei vel in(!) valvasores qui hodie capitanei dicuntur licet non proprie; *Salz.* (*f. 53*[rb]): Si capitanei vel maiores valvassores, qui hodie capitanei dicuntur, licet inproprie; *Vat1* (*f. 254*[ra]): Si capitanei vel maiores valvasores, qui hodie vocantur capitanei, licet improprie dicuntur maiores. [6] *V2* controversia feudi definiatur.

regarding 'capitanei' and greater and lesser 'valvasores'; but regarding the smallest, i.e. those who hold a benefice from lesser 'valvasores', one is to observe what follows.[1]

### [LF 1.15]
### [*V2 1.16*] Concerning fiefs given to the smallest 'valvasores'[2]

If lesser 'valvasores' wish to take a benefice away from the smallest, they may, unless they have sold the benefice to them. If, however, they received a payment for the benefice, then they are to either give back the payment or surrender the benefice.

### [LF 1.16]
### [*V2 1.17*] In what ways a fief is to be lost

If 'capitanei', or greater 'valvasores' who are today called 'capitanei', although they are improperly called so, or lesser 'valvasores'[3] desert their lords in battle, or if they wittingly disclose confidential information to their detriment, if 'valvasores' commit adultery with their lords' wives, if they wittingly assault their lords, or commit similar faults, they ought to be deprived of the benefice.

### [LF 1.17]
### [*V2 1.18*] Before whom a dispute over a fief ought to be determined

If there is a dispute over a benefice between 'capitanei', it ought to be determined before the emperor. But if there is a dispute over a benefice between lesser and greater 'valvasores', it is to be determined in a trial by peers or by a judge of their [lord's] court. If any of the 'capitanei', or the greater or lesser 'valvasores', alienates his benefice, whether all or a portion, and he or his heir dies without heir, since the benefice becomes vacant for the lords, all that he did ought to be revoked.

[1] *V2* One should observe what we are going to say below. [2] *V2* What the law is concerning fiefs given to the smallest 'valvasores'. [3] *V1* although they might be improperly called lesser.

### [LF 1.18]
### [*V2 1.19*] Constitutiones feudales domini Lotharii imperatoris quas ante ianuam beati Petri in civitate Romana condidit observandas[1]

[pr.] Si quis ex militum ordine decesserit, qui de feudo investitus fuerit, ut constitutum habemus, observetur de beneficio et successione et de[2] culpis. Si unus inculpatus fuerit una de his nominatis culpis, ut habemus insertum, observetur per constitutionem domini Lotharii imperatoris, quam constituit[3] tempore Eugenii Papae ante ianuam beati[4] Petri apostoli civitate Romana per laudamentum sapientium Mediolani atque Papiae, Mantuae[5] et Veronae, quae Bernus vocatur,[6] et Parmae seu[7] Luccae et Pisae et Siponti et marchionum atque ducum vel capitaneorum atque maiorum valvasorum.

Imperator Lotharius Eugenio Papae et universo populo.

[§ 1] Si quis miles mortuus fuerit sine filio masculo et nepotem reliquerit, de beneficio avi in patris vicem succedit. Et [si hic deest,][8] et fratrem reliquerit, in beneficium patris ipse succedat. Et si filius fratris mortuus fuerit, frater patris in beneficium avi defuncti succedat.

### [LF 1.19]
### [*V2 1.20*] De beneficio fratris et qualiter frater fratri in feudum succedat[9]

Si quis acquisierit beneficium et sine filio masculo mortuus fuerit et fratrem reliquerit, frater non succedat fratri, sed dominus habeat, nisi per investituram a domino ordinatum fuerit 'ut frater succedat fratri, si mortuus fuerit sine herede masculo' vel nisi[10] de communibus bonis fuerit emptum utriusque nomine domino sciente, si insimul steterint vel in hoste[11] regis acquisierint.

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[1] *MGH, Constitutiones*, i, 680–683 (n. 454), *where the attribution to Lothair I is rightly questioned.* [2] *V2 omits* de. [3] *V2* quae est constituta. [4] *V2* beatissimi. [5] *V2* Papiae atque Mediolani, atque Mantue. [6] *V2* quae Brenus, alias Hybernus vocatur. [7] *V2 omits* seu. [8] *V1* Et si heredem. *The discrepancy with V2, which follows Ant., is evident. The latter solution seems more plausible in light of the main argument of the chapter: the fief of a line of descent passes to collaterals only if the line dies out. Therefore, the fief of a vassal passes to sons and grandsons; if there is no direct male descent, it passes to his brother, but only if they had inherited the fief from their father; if both lines die out, i.e. the knight's and his brother's, and the fief has been inherited from a common grandfather, it should go to the uncle—i.e. 'the brother of the father* [*of the knight*]*'.* [9] *V2* De beneficio fratris, et qualiter frater in beneficium fratris succedat. [10] *V2* vel nisi beneficium. [11] *V2* in hostem.

## [LF 1.18]
## [*V2 1.19*] The feudal constitutions of the lord Emperor Lothair which he established before the gate of Saint Peter in the city of Rome, to be observed

[pr.] If anyone of the rank of knights who has been invested with a fief dies, what we have established concerning benefice, succession, and faults ought to be observed. If someone is accused of one of the named faults, as we have included, what is in accordance with the constitution of Emperor Lothair is to be observed, which he decreed in the time of Pope Eugenius at the gate of St Peter the Apostle in the city of Rome, with the approval of experts from Milan, Pavia, Mantua, Verona, which is called Bernus, Parma, Lucca, Pisa, and Siponto, and of marquesses, and dukes, and 'capitanei' and greater 'valvasores'.

Emperor Lothair to Pope Eugenius and all the people.

[§ 1] If any knight has died without a male child and leaves a grandson, concerning the benefice of the grandfather, he succeeds in place of the father. And if there is no grandson, and [the knight] leaves a brother, he is to succeed to the benefice of their father. And if the son of the brother [also] has died, the brother of the [knight's] father is to succeed to the benefice of the deceased grandfather.

## [LF 1.19]
## [*V2 1.20*] Concerning the benefice of a brother and how a brother is to succeed a brother to a fief[1]

If anyone acquires a benefice and dies without a male child and leaves a brother, the brother is not to succeed the brother but the lord is to have it, unless through the investiture it is ordained by the lord 'that the brother is to succeed the brother, if he dies without a male heir'; or unless it is bought out of joint resources in the name of both, with the lord knowing; or if they live on it together or acquire it on a royal expedition.

[1] *V2* Concerning the benefice of a bother and how a brother is to succeed to the benefice of his brother.

## [LF 1.20]
## [*V2 1.21*] De feudo sine culpa non amittendo

[pr.] Sancimus ut nemo miles sine cognita culpa beneficium suum amittat, si ex his culpis[1] vel causis convictus non fuerit, quas milites usi sunt nominare, quando fidelitatem faciunt dominis suis, vel[2] per laudamentum parium suorum, vel si dominis suis deservire noluerint.[3]

[§ 1] Si quis miles beneficium suum vendiderit totum sine[4] iussu domini sui, proprium beneficium ut amittat[5] decernimus, dominus vero habeat, vel si concubuerit cum uxore domini sui domino vivente, vel si in pugna dominum suum dimiserit et cum eo non laboraverit si potuerit.

## [LF 1.21]
## [*V2 1.22*] Quo tempore miles investituram petere debeat

[pr.] Sancimus ut nemo miles ultra annum et mensem vadat, ut investituram beneficii sui a filio vel successore domini sui non petat, vel post mortem domini sui vel patris sui vel alterius, cui succedere debet,[6] nisi iusta causa intervenerit, quare non petierit, veluti mortis[7] vel capitalis[8] inimicitiae vel infantia vel infamia[9] vel etiam[10] iusta absentia; et si, ut supra dictum est, non petierit, damnetur.

[§ 1] Si quis fecerit investituram vel cambium de beneficio sui militis sine illius consensu, cuius est beneficium, pro non facto habeatur.

[§ 2] Sancimus ut nemo miles eiiciatur[11] de possessione sui beneficii nisi convicta culpa, quae sit laudata[12] per iudicium parium suorum, sicut supra diximus. Si autem dixerit miles, quod sui pares inique iudicassent, miles in possessione maneat per VI hebdomadas et ad nostram veniat praesentiam cum illis, qui laudamentum atque iudicium fecerunt, et ante nos diffiniemus.

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[1] *V2* di ex culpis iis. [2] *V2 omits* vel. [3] *V2 and V3 add*: Tunc condictio causa data proponitur ad repetendum feudum ex quo non servit domino. Nam si steterit viginti annis et ultra, quod non servierit domino, nisi necesse fuerit domino, feudum non amittit. [4] *V2 adds* voluntate vel. [5] *V2* ut proprium beneficium amittat. [6] *V2* vel post mortem patris sui vel alterius cui succedebat. [7] *V2* mors. [8] *V2* capitales. [9] *V2 omits* vel infamia. [10] *V2 omits* etiam. [11] *V2* adimatur. [12] *V2* laudanda.

## [LF 1.20]
## [*V2 1.21*] On not losing a fief without fault

[pr.] We establish that no knight is to lose his benefice without proven fault, if he is not convicted of one of those faults or reasons [for losing a fief] which knights are accustomed to name when they do fealty to their lords, or through the judgment of their peers;[1] or unless they refuse to serve their lords.[2]

[§1] We determine that a knight ought to lose his benefice, and the lord is to have it, if the knight sells all his benefice without his lord's command;[3] or if he sleeps with his lord's wife while the lord is alive; or if he deserts his lord in battle and does not exert himself by his side if he can.

## [LF 1.21]
## [*V2 1.22*] When a knight ought to seek investiture

[pr.] We establish that no knight is to go without seeking investiture of his benefice from his lord's son or successor more than a year and a month after the death of either his lord, his own father or another whom he ought to succeed,[4] unless there is a just cause wherefore he did not seek [investiture], such as death, mortal enmity, infancy or ill repute, or even just absence. And if he does not seek [investiture] as said above, he is to be condemned.

[§1] If anyone makes investiture or an exchange regarding the benefice of his knight without the consent of him whose benefice it is, it is to be held as not having been done.

[§2] We establish that no knight is to be ejected from possession of his benefice unless for proven fault which has been declared[5] through judgment of his peers, as we said above. If, however, the knight says that his peers have judged unfairly, the knight ought to stay in possession for six weeks, and come to our presence with those who made the declaration and judgment, and we ourselves shall decide.

[1] *V2* to their lords, through the judgment of his peers. [2] *V2 and V3 add*: In this case, a personal action called 'condictio causa data' is proposed to seek recovery of the fief on the grounds that he does not serve the lord. Indeed, if he stays for twenty years or more without serving the lord, he does not lose the fief if the lord has not needed his service. *This sentence is likely to be a later addition. By Roman law, the 'condictio causa data causa non secuta' was a personal action for recovery of transferred property, when the purpose for the transfer failed—e.g., after failure to provide payment or render service as specified in a contract or agreement.* [3] *V2* his lord's consent or command. [4] *V2* or after the death of his father, or another to whom he succeeded. [5] *V2* which should be judged.

## [LF 1.22]
## [*V2 1.23*] De contentione inter dominum et vasallum de investitura[1]

Si quis miles in possessione sui beneficii fuerit et dominus investituram negaverit, miles affirmet per iusiurandum, si potuerit, quod suum sit beneficium per investituram domini sui. Et si dominus possederit et miles sic dixerit, quod investitus fuerit a domino suo, et dominus negaverit, adhibeantur pares illius, et per ipsos veritas inveniatur; et si pares non fuerint, veritas inveniatur per dominum, quia non est bonum, ut veritas denegetur.

## [LF 1.23]
## [*V2 1.24*] Quemadmodum feudum ad filiam pertineat

Si quis sine filio masculo mortuus fuerit et reliquerit filiam, filia non habeat beneficium patris, nisi a domino redemerit. Si autem dominus ei dare voluerit propter servitium et amorem patris, non revocetur ab ullo ex parentibus suis neque damnetur.

## [LF 1.24]
## [*V2 1.25*] Quibus modis feudum constitui potest

[pr.] Sciendum est, feudum sine investitura nullo modo constitui posse, etsi[2] domino iubente quis alicuius rei possessionem nomine feudi nanciscatur et teneat; licet tamen possessionem taliter adeptam, dum vixerit, quasi feudi nomine retinere, heredes eius in hoc iure nullo modo ei succedant[3].

[§ 1] Si dominus, qui investivit, forte sit clericus et contigerit, ut ante moriatur quam vasallus possessionem feudi nanciscatur,[4] exinanitur feudum. Quod generaliter in omnibus clericis, qui feudum dant observatur.

[1] *V2* investitura feudi. [2] *V2* etiam. [3] *V2* nullo modo ei succedente. [4] *V2* nancisceretur.

### [LF 1.22]
### [*V2 1.23*] Concerning a dispute between a lord and a vassal over an investiture[1]

If any knight is in possession of his benefice and the lord denies the investiture, the knight is to affirm by oath, if he can, that the benefice is his by his lord's investiture. And if the lord possesses, and the knight says the following, that he was invested by his lord, and the lord denies, the knight's peers are to be gathered and the truth be found through them. And if there are not peers, the truth is to be found through the lord, since it is not good that the truth be denied.

### [LF 1.23]
### [*V2 1.24*] In what way a fief is to belong to a daughter

If anyone dies without a male child and leaves a daughter, the daughter is not to have the father's benefice unless she redeems it from the lord. If, however, the lord wishes to give it to her because of her father's service and affection, it is not to be reclaimed by any of her relatives, nor should it be condemned.

### [LF 1.24]
### [*V2 1.25*] In what ways a fief can be established

[pr.] It should be known that a fief can in no way be established without investiture, even if someone acquires and holds possession of any property as a fief by the lord's command. However, he is permitted to retain possession obtained in this way as if it was a fief for as long as he lives, but in no way are his heirs to succeed him to this right.

[§1] If the lord who made the investiture is perhaps a cleric, and it happens that he dies before the vassal would acquire possession of the fief, the fief is voided. This is observed generally with respect to all clerics who give fiefs.

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[1] *V2* investiture of a fief.

## [LF 1.25]
## [*V2 1.26*] Si de investitura inter dominum et vasallum lis oriatur

[pr.] Si inter dominum et vasallum de investitione oriatur contentio,[1] domino scilicet investitionem[2] se fecisse negante, si testibus res probari non poterit, possessoris sacramento res decidatur. Idem et in eorum successoribus observatur. Si vero testes interfuerunt et eos vasallus ad testimonium vocaverit, eorum testimonio cum sacramento credatur. Testes vero sint pares eius et qui ab eodem domino feudum teneant. Qui si tempore investitionis abfuerint, etiam extranei sunt recipiendi. Qui etiam si veritatem celare voluerint amore forte vel praemio[3] vel alia qualibet ex causa, a comite vel a populo iurare compellantur, quod ex ea causa falsitatem non dicant nec vera se scientibus tacebunt[4]. His enim non cogentibus eos vasallus cum misso domini[5] ad imperatorem ire festinet,[6] et quod imperator iudicaverit,[7] observetur. Si autem se venturum vel nuntium missurum vasallus promittat, ex quo promiserit usque ad annum quiete possideat. Si vero ad regem non venerit vel non miserit infra annum, domini sacramento causa finiatur.

[§1] Et si testes sacramento iam dicto praestito se non interfuisse dixerint, domini sacramento quaestio terminetur. Haec omnia etiam in clericorum personis locum habent, praeterquam quod de personis testium dictum est. In clericorum enim feudo aequaliter recipiuntur[8] pares et extranei, hoc ideo quia, cum clerici quosdam de feudo investiunt, saepe absconse et sine praesentia suorum confratrum facere student.

[§2] Si quis se vel patrem suum ab aliquo vel patre eius[9] de feudo investitum fuisse[10] contenderit, nisi per duos pares de domo ipsius domini probaverit, quod intendit, vel alios duos idoneos testes,[11] tunc in electione domini est, utrum velit iurare cum 12 sacramentalibus, illum, qui feudum quaerit, per se vel patrem eius, si de hoc quaeratur, de ipso feudo investitum non fuisse. Quod si

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[1] *V2* Si inter dominum et vasallum lis oriatur de investitura feudi. [2] *V2* investituram. [3] *V2* pretio. [4] *V2* nec vera scientes tacebunt. [5] *V2* cum ipso domino. [6] *V2* ire festinet, eique causam intimet, et. [7] *V2* imperator inter eos iudicaverit. [8] *V2* In clericorum feudo pariter accipiuntur. [9] *V2* Si quis se vel patrem suum ab aliquo defuncto, vel patre eius. [10] *V2* esse. [11] *V2* quod intendit, vel etiam, cum pares absunt, per alios duos idoneos testes.

## [LF 1.25]
## [*V2 1.26*] If a dispute arises between a lord and a vassal concerning an investiture

[pr.] If a dispute arises between a lord and a vassal over an investiture, i.e. with the lord denying having made the investiture, if the matter cannot be proved through witnesses, it is to be decided by the oath of the possessor. The same is also observed in respect to their successors. If, however, witnesses were present [at the investiture] and the vassal calls upon them to testify, one is to believe their sworn testimony. Witnesses, however, should be [the vassal's] peers who also hold fiefs from the same lord. If peers were not present at the time of the investiture, even outsiders are to be admitted. Also, if [witnesses] wish to conceal the truth, perhaps out of affection, for a reward, or any other reason, they are to be compelled by the count or the people[1] to swear that they will not for this reason speak falsehood or be silent about what they know to be true. If [the count or the people] do not compel them, the vassal should hasten to go to the emperor together with a messenger of his lord, and what the emperor judges is to be observed.[2] If, however, the vassal promises that he will come or send a messenger, he is to peaceably possess the fief for a year after he promised; but if he neither comes nor sends [anyone] to the king within a year, the case is to be determined by the lord's oath.

[§1] And if witnesses, after having taken the aforesaid oath, say that they were not present [at the investiture], the question is to be determined by the lord's oath. All of this applies also in respect to clerical persons, except for what is said concerning the personal status of witnesses, since peers and outsiders are equally received [as witnesses] in respect to a clerical fief. This is so because when clerics invest someone with a fief, they often endeavour to do this secretly and without the presence of their fellow brothers.

[§2] If anyone contends that he or his father was invested with a fief by another or the latter's father,[3] if he does not prove what he sustains through two peers of the household[4] of the same lord, or two other suitable witnesses,[5] then it is the lord's choice whether he wants to swear with twelve oath-helpers that he who claims the fief was not invested with that same fief by himself or his father, should the claim be about him. If he refuses to swear, the plaintiff

[1] *Here 'populus' might also mean 'assembly', or 'civic council': see Glossary.* [2] *V2* the vassal should hasten to go to the emperor together with his lord, inform him about the case, and what the emperor judges between them is to be observed. [3] *V2* with a fief by someone who has died or his father. [4] *Here 'domus'* ('*household*') *means 'court'.* [5] *V2* or, when there are not peers, also through two other suitable witnesses.

iurare noluerit, actor iuret cum 12 sacramentalibus, se vel patrem suum investitum fuisse. Quod si iurare noluerit, qui convenitur est absolvendus. Secundum enim morem Mediolanensium haec sacramenta sunt praestanda tam a filiis actoris vel rei quam ab ipsis principalibus personis.

[§3] Si autem aliquis in possessione feudi sit, de quo dominus dicit eum investitum non fuisse, tunc sine ulla testium probatione debet solus iurare, se vel patrem suum fuisse investitum. Haec autem sunt ita tenenda, si per unum annum domino sciente et non contradicente in possessione feudi permanserit;[1] alioquin iusta ignorantia vel parvi temporis negligentia cum iniquae possessionis periurio quandoque domino in possessione[2] damnum affert.[3]

## [LF 1.26]
## [*V2 1.27*] De feudo dato in vicem legis commissoriae[4]

[pr.] Si quis obligaverit aliquam rem pignori eo pacto 'ut si statuto tempore pecunia soluta non fuisset, esset creditoris[5] et eam pro feudo habeat', potest debitor quandocunque pecuniam solvendo pacto non obstante pignus recuperare. Feudum enim non sub praetextu pecuniae, sed amore et honore domini acquirendum est.

[§1] Si quis investierit aliquem de feudo sui militis, viri Placentini asserunt,[6] hanc investituram non aliter valere nisi eo consentiente, cuius erat feudum. Mediolanenses vero[7] et Cremonenses nihil distare asseverant, utrum eo consentiente[8] an ignorante, dummodo eo vivente nullum detrimentum de feudo suo sibi contingat. Hoc autem dicendum est de eo milite, qui feudi successores non habet.

[§2] [*V2 1.28*][9] Quidam obligaverat terram quandam suo militi, deinde cum filius domini post longum tempus pecuniam offerendo pignus liberare voluisset, filius militis contendebat, patrem suum a domino suo defuncto de praedicto pignore feudi investitionem accepisse. Unde viri prudentes Mediolanen-

[1] *V2* permansit. [2] *V2* in possessionem. [3] *V2* afferat. [4] *V2 adds* reprobando. [5] *V2* res esset creditoris. [6] *V2* viri Placentini prorsus asserunt. [7] *V2 omits* vero. [8] *V2* sciente. [9] *V2 tit.* De usu Mediolanensium secundum quosdam.

is to swear together with twelve oath-helpers that he, or his father, has been invested; and if he refuses to swear, the defendant must be cleared. Indeed, in accordance with the Milanese practice, these oaths must be taken both by the sons of the plaintiff or the defendant, and by the main participants themselves.

[§ 3] If, however, anyone is in possession of a fief concerning which the lord says that he has not been invested, then he ought to swear alone, without any proof of witnesses, that he or his father have been invested. However, these things are to be observed [only] if he remains in possession of the fief for one year with the lord knowing and not dissenting. Otherwise, [a lord's] justified ignorance or negligence for a short time, along with [the possessor's] perjury concerning [his] unjust possession, [can] sometimes cause harm to the lord in his possession.

## [LF 1.26]
## [*V2 1.27*] Concerning a fief that is given in relation to a forfeiture clause[1]

[pr.] If anyone ties up in pledge any property on this agreement, 'that if money has not been paid within a fixed time it is to be the creditor's and he is to have it as a fief', the debtor can recover the pledge at any time by paying the money, notwithstanding the agreement. For a fief should be acquired not by reason of money but by the lord's affection and honour.

[§ 1] If anyone invests another with the fief of a knight of his, the men of Piacenza assert[2] that this investiture has no effect if he whose fief it was does not consent. The people of Milan and Cremona, however, affirm that it makes no difference whether he consents[3] or is unaware, provided he does not suffer any loss in respect to his fief while he is alive. However, this should be said concerning the knight who has no successors to the fief.

[§ 2] [*V2 1.28*][4] Someone had tied up in pledge some land to his knight. Then, after a long time, when the lord's son wished to redeem the pledge by offering money, the knight's son contended that his father had received from the deceased lord investiture of a fief regarding the aforesaid pledge. Concerning

[1] *V2* Concerning a fief that is given in relation to a forfeiture clause, which is to be rejected. *The heading refers to a fief that is granted for a breach of the 'lex commissoria'. The 'lex commissoria' was a non-performance clause often inserted in money loans, by which debtors lost their pledge to creditors following failure to pay a debt or fulfil other contractual obligations.* [2] *V2* the men of Piacenza resolutely assert. [3] *V2* knows. [4] *V2 tit.* Concerning the usage of the Milanese people, according to some.

ses interrogati laudaverunt, in electione filii militis esse, cum 12 sacramentalibus iurare, patrem suum a domino suo post investituram defuncto vel se per investituram praedictam terram tenuisse[1] ita, ut per 30 annos contestatio pignoris a parte domini adversus ipsum vel patrem suum facta non fuisset. Si autem ipse iurare noluerit, filius defuncti domini necesse habet, iurare cum 12 sacramentalibus, defunctum militem inde per feudum investitum non fuisse. Quodsi ita iurare recuset, investire ipsum debet militis filium de iam dicta terra per feudum.[2]

[1] *V2* patrem suum, vel se, a domino suo per investituram praedictam terram tenuisse; *Ant.* patrem suum, vel se, per investituram praedictam. [2] *V2* investire ipsum debet militis filium domini filius de iam dicta terra per feudum.

this, the Milanese experts, who were consulted, declared that the knight's son could choose to swear with twelve oath-helpers that his father had held the aforesaid land from his lord, who died after the investiture, or that he himself had held it through investiture,[1] thus that for thirty years no formal claim of the pledge was laid from the lord's part against him or his father. However, if he does not wish to swear, the son of the deceased lord needs to swear with twelve oath-helpers that the deceased knight was not invested in fief on that basis. And if he refuses to swear, he ought to invest the knight's son with the aforesaid land as a fief.

[1] *V2* that his father, or himself, had held the aforesaid land through investiture from their lord.

# *Libri feudorum, compilatio vulgata*: Book 2

∵

## Explicit liber primus. Incipit secundus[1]

### [lf 2.1]
### De feudi cognitione

[pr.] Obertus de Orto Anselmo filio suo[2] salutem. Causarum, quarum cognitio frequenter nobis committitur, aliae quidem[3] dirimuntur iure Romano, aliae vero legibus Longobardorum, aliae autem secundum regni consuetudinem. Quae quam sint varia,[4] quamque secundum diversorum locorum aut curiarum mores sint diversa,[5] nec breviter potest dici nec hoc libello facile comprehendi,[6] usum tamen feudi, qui in nostris partibus obtinet, prout possibile est, tibi exponere necessarium duxi. In iudicio etenim, quo de feudis agitur, illud legibus nostris contrarium dici solet. Legum autem Romanarum non est vilis auctoritas, sed non adeo vim suam extendunt, ut usum vincant aut mores. Strenuus autem iurisperitus, sicubi casus emerserit, qui consuetudine feudi non sit comprehensus, absque calumnia uti poterit lege scripta.

[§1] Sciendum est itaque,[7] feudum sive beneficium non nisi in rebus soli aut solo cohaerentibus aut in his,[8] quae inter immobilia computantur[9]—veluti cum de camera aut de caneva[10] feudum datur—posse consistere ac feudum neminem posse acquirere nisi investitura aut successione.

### [lf 2.2]
### Quid sit investitura

[pr.] Investitura proprie quidem dicitur possessio, abusivo autem modo dicitur investitura, quando hasta vel aliud corporeum quodlibet porrigitur a domino,[11] se investituram facere dicente. Quae si quidem ab eo[12] fiat, qui alios habet

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[1] *V2* Feudorum libri liber secundus. [2] *V2* filio suo dilecto. [3] *V2 omits* quidem. [4] *V2* Quae quam varia; *V3* quae quanquam sint variae. [5] *V2* sit diversa; *V3* sint diversae. [6] *The tradition of this sentence, as appears from the previous footnotes, is uncertain. Concordance in V1 is not clear*: varia *and* diversa *could be either feminine singular or neuter plural, with the latter agreeing with the verb* sint; *however, there is no neuter word in this sentence except for* ius, *singular, in the previous phrase, which is unlikely to be the subject of this explanation. The most plausible solution would be to assume a miswriting of* sint *for* sit—*indeed, V2 reports* sit *in the second part of the phrase. This would result in a plain agreement of* quae (*i.e., this custom*), *with* varia *and* diversa. *Ant. omits* sint varia, quamque. *Some manuscripts of the intermediate recension provide a simplified version. Salz.* (*f.* $54^{rb}$): Quamquam diversorum locorum aut curiarum mores sint diversi, nec breviter potest dici nec facile in libbello(!) potest comprehendi; *SG* (*f.* $98^{a-b}$): Quamquam diversorum locorum aut curiarum mores sint diversi, nec breviter potest dici nec facile libello hoc potest comprehendi. [7] *V2* Sciendum est autem. [8] *V2* aut in iis. [9] *V2* connumerantur. [10] *V2* cavena. [11] *V2* a domino feudi. [12] *V2* ab illo.

## Here ends the first book. Here begins the second[1]

### [LF 2.1]
### Concerning cognisance of a fief

[pr.] Obertus de Orto sends his greetings to his son[2] Anselm. Of the cases of which cognisance is frequently entrusted to us,[3] some indeed are resolved by Roman law, some by the laws of the Lombards, but some others according to the custom of the realm. Although it can neither be stated briefly nor easily encompassed in this little book how varied these [customs] are, and how they are different according to the practices of different places and courts,[4] I nonetheless thought it necessary to explain to you, insofar as it is possible, the usage of the fief that holds in our regions. Certainly, in a trial which concerns fiefs,[5] it is common to say what is contrary to our laws:[6] indeed, the authority of Roman laws is not negligible, but they do not extend their force so far as to override custom or practices. However, when a case emerges that is not encompassed by the custom of the fief, the quick-minded lawyer may use the written law without objection.

[§ 1] And so it should be known that a fief or benefice can only consist of things of the soil, or adjoined to the soil, or those things that are reckoned as immoveables, e.g. when a fief is given 'de camera' or 'de caneva'.[7] And [it should be known that] no one can acquire a fief unless by investiture or succession.

### [LF 2.2]
### What investiture is

[pr.] Investiture is properly called possession. However, it is called investiture in an improper way, when a lance or another corporeal object is handed over by the lord while he says he is making an investiture. And, certainly, if it is made

[1] *V2* The second book of the book of fiefs. [2] *V2* to his beloved son. [3] *Lit.* Among the disputes the cognisance of which is frequently entrusted to us. [4] *SG and Salz.*: Although the practices of different places or courts are different, and this cannot be stated briefly nor easily encompassed in this little book. [5] *Lit.* in the trial in which it is disputed over fiefs. [6] *I.e., Roman law*. [7] *For 'feudum de camera' and 'feudum de caneva', see Glossary. Obertus stresses here the interpretation of fiefs in terms of 'real rights' over a 'res', a material thing or something that can be reckoned as such. He is making an important distinction, based on Roman law, between these real rights and personal rights, which on the other hand entitle to performance—i.e., contractual obligation.*

vasallos, saltem coram duobus ex illis sollemniter fieri debet, alioquin, licet alii intersint testes, investitura minime valet, nisi per breve testatum secundum quosdam.[1] Si enim domino adhuc in possessione constituto, an facta sit investitura, quaeratur, non debet probari nisi per pares[2] illius domus vel per publicum instrumentum a tribus vel duobus paribus confirmatum. Nam si instrumentum defecerit vel quia factum non fuerit vel quia amissum sit, tunc, qui probare desiderat, pares illius curiae, qui interfuerunt, offerat. Qui si denegaverint,[3] corrupti forte odio vel gratia seu pretio et dicant, se non interfuisse, cum investitura fieret,[4] vel non reminisci, tunc domino cogente iurent tactis sacrosanctis scripturis, quod huius rei veritatem nesciant, et tunc actor aut alios producat pares aut iurisiurandi electio detur domino, ut proinde iuret, investituram factam non esse, aut sacramentum vasallo referat, et ille aut iuret aut quiescat.[5] Quodsi iurare pares aliqua ex causa recusant[6] nec dominus eos iurare compellat, liceat vasallo etiam per extraneos probare investituram, testibus vero deficientibus iurisiurandi electio detur domino.

[§ 1] Si vero vasallus quidem possideat vel si feudum camerae aut canevae in duabus seu tribus quietis acceptionibus quasi possideat, dominus autem feudum esse negans rem suam petat, vel quod de camera vel de caneva bis vel ter, sicut diximus, iam solutum est, deinceps solvere renuat, tunc non est opus probatione, sed possidenti data electione aut iuret, suum esse feudum rectum, aut domino referat iusiurandum. [*V2 2.2.2*] Si autem investitura ab eo, qui vasallos non habebat, dicatur facta, per quoslibet idoneos testes seu per publicum instrumentum probari potest, aut inopia probationis emergente res decidatur per iusiurandum.

[§ 2][*V2 2.2.3*] Praeterea si tenor aliquis praeter communem feudi rationem in investitura a domino dicatur intervenisse, vel si dicatur feudum sub tali conditione dedisse 'ut vasallus in festivis diebus vadat ad ecclesiam cum uxore sua' omni facultate probandi domino ademta habeat vasallus potestatem se defendendi per sacramentum.

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[1] *V2 omits* nisi per breve testatum secundum quosdam. [2] *V2* per pares curtis. [3] *V2* negaverint. [4] *V2* cum investitura facta fuerit. [5] *V2* acquiescat. *For 'breve testatum', see Glossary.* [6] *V2* recusaverint.

by him who has other vassals, it ought to be made before at least two of them according to due form; otherwise, even though other witnesses are present, the investiture lacks force—unless, according to some, [it is made] through a certified charter.[1] For if the lord still remains in possession and there is a dispute concerning whether investiture has been made, proof ought to be made only through the peers of that household or a public instrument confirmed by three, or two, peers. If indeed there is no instrument, because it was not made or has been lost, then he who wants to make proof is to present the peers of that court who were present [at the investiture]. If they deny it, corrupted perhaps by hatred, favour, or payment, and say that they were not present when the investiture was made, or that they do not remember, then, compelled by the lord, they are to swear on the Holy Scriptures that they do not know the truth of this matter. Then, either the plaintiff is to produce other peers or the lord is to be given the choice to take an oath, so that he can either swear that investiture has not been made or hand over the oath to the vassal and [in that case] the latter is to either swear or leave the matter be. If the peers, for any reason, refuse to swear and the lord does not compel them to swear, the vassal may prove investiture even through outsiders [i.e. people other than peers]. If there are no witnesses, the lord is to be given the choice of taking an oath.

[§ 1] If, however, the vassal possesses a fief, or if he has quasi-possession of a fief 'de camera' or 'de caneva'[2] after peaceably receiving two or three [pecuniary or in-kind] payments, and the lord denies it is a fief and claims back his property—or, as we said concerning fiefs 'de camera' or 'de caneva', he has made payment two or three times and refuses to pay thereafter—then there is no need of making proof, but the possessor should be given the choice to either swear it is his rightful fief or hand over the oath to the lord. [*V2 2.2.2*] If however it is said that investiture was made by someone who had no vassals, proof can be made through any suitable witnesses or through a public instrument; otherwise, in the absence of proof, the matter is to be decided through oath-taking.

[§ 2] [*V2 2.2.3*] Furthermore, if it is said that some terms contrary to the common notion of a fief were introduced by the lord in the investiture,[3] or it is said that he gave the fief on this condition 'that the vassal is to accompany his wife to church on festive days', any capacity to make proof is taken away from the lord, and the vassal shall have the capacity to defend himself through an oath.

[1] *For 'breve testatum', see Glossary.* [2] *For 'feudum de camera' or 'de caneva', see Glossary.* [3] *A more literal translation could be*: Furthermore, if it is said by the lord that some terms beyond the general nature of the fief were added in the investiture.

[§ 3][1] Item si vasallus pactum speciale contra feudi consuetudinem allegat, velut de filiarum successione, liceat ei tenorem si potest sicut investituram probare. Quodsi in probatione defecerit vel cessaverit, concedatur domino hoc denegare iureiurando praestito.

### [LF 2.3]
### Per quos fiat investitura et per quos recipiatur

[pr.] Investitura autem aut de veteri beneficio fit aut de novo. Quae de veteri fit, etiam a minore potest fieri. Sive autem a minore sive a maiore fiat, non de omni possessione vasalli, sed de iusta tantum facta intelligitur, nisi aliud nominatim dicatur. Novi vero feudi investitura non ab alio recte fit, nisi ab eo, qui legitime suorum bonorum administrationem habet. Qui enim qualibet ratione aliquid de bonis suis impeditur alienare, is nec per feudum poterit investituram facere. [*V2 2.3.1*] Sed etiam res, cuius alienatio prohibetur, nec per beneficium dari conceditur, nisi in casu ut ecce[2] si quis ex agnatis tuis rem, quae a communi parente per successionem ad eum pervenerit, alienare voluerit, non permittitur ei etiam secundum antiquam consuetudinem alii eam vendere nisi tibi vel alii proximiori pro aequali pretio accipere volenti; per feudum tamen cuilibet dare[3] potest, nisi fiat in fraudem nostrae consuetudinis vel legis novae bonae memoriae Lotharii imperatoris.[4] Tunc enim rescissa investitura, reddito a te vel ab alio proximiore secundum[5] antiquam consuetudinem pretio, si quod dederit, is, qui investituram accepit, compellatur rem tibi restituere.

[§ 1][6] Personam vero investituram accipientis non distinguimus; nam etiam servus investiri poterit, nisi ignorantia praetendatur. Sed utrum ipse an alius pro te investituram faciat vel suscipiat, nihil interesse putamus. Potest enim hoc negotium et per procuratorem ab utraque parte expediri.

[§ 2] Feminam quoque etiam novi feudi investituram facere posse, plerique consentiunt.

[§ 3] Nulla autem investitura fieri debet ei, qui fidelitatem facere recusat, cum a fidelitate feudum dicatur vel a fide, nisi eo pacto acquisitum sit ei feudum 'ut sine iuramento fidelitatis habeatur'.

[1] *V2 has this § as the second part of 2.2.3.* [2] *V2* nisi in casibus; ut ecce. [3] *V2* dari. [4] *V2* Lotharii vel Friderici imperatoris. [5] *V2* ab alio proximiore videlicet, secundum. [6] *V2 has this § as the second part of LF 2.3.1.*

[§ 3][1] Also, if the vassal cites a specific agreement contrary to the custom of the fief, such as one concerning succession of daughters, he may prove, if he can, its terms, just as investiture. And if he fails or defaults in his proof, the lord shall be allowed to deny this after taking an oath.

## [LF 2.3]
## By whom investiture is to be made and by whom it is to be received

[pr.] Investiture indeed is made either with an old benefice or with a new one. The one that is made with an old [benefice] can also be made by a minor. However, whether it is made by a minor or an adult, it is not considered to be made regarding every possession of a vassal, but only regarding his lawful possession, unless it is expressly said otherwise. On the other hand, investiture with a new fief is not rightly made by anyone except by him who lawfully has the management of his own estates, for he who is for any reason prevented from alienating something from his estates, cannot make an investiture by fief. [*V2 2.3.1*] But also property the alienation of which is prohibited may not be given as a benefice, except for the case which follows: if any of your agnates wants to alienate some property that has come to him by succession from a common relative, he is not permitted, also by long-standing custom, to sell it to anyone except you, or a closer relative, willing to receive it for an equal price. Nonetheless, he can give it as a fief to anyone if this is not done in fraud of our custom or of the new law of the dearly remembered Emperor Lothair.[2] For then, once investiture has been rescinded and you, or a closer relative, according to long-standing custom have restored its price, if it was paid, he who received investiture is to be compelled to restore the property to you.

[§ 1][3] We do not make distinctions as to the person who receives investiture, for even a slave can be invested unless ignorance [of this status] is pleaded [by him who makes investiture]. But we think that there is no difference as to whether you yourself or another on your behalf makes or receives investiture, for such a transaction can be performed by either party even by proxy.

[§ 2] Many agree that a woman too can make investiture of a new fief.

[§ 3] However, no investiture ought to be made to him who refuses to do fealty, since 'fief' derives its name from 'fealty' or 'faith', unless he acquires the fief on the agreement that it can be had without an oath of fealty.

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[1] *V2 has this § as the second part of 2.2.3.* [2] *V2 adds* or Emperor Frederick. [3] *V2 has this § as the second part of 2.3.1.*

### [LF 2.4]
### Quid praecedere debeat, utrum investitura an fidelitas

[pr.] Utrum autem investitura praecedere debeat fidelitatem an fidelitas investituram,[1] quaesitum scio. Et saepe responsum est, investituram debere praecedere fidelitatem.

[§ 1] Fidelitatem[2] dicimus iusiurandum, quod a vasallo praestatur domino.

### [LF 2.5]
### Qualiter vasallus iurare debeat fidelitatem

Qualiter autem debeat iurare vasallus fidelitatem, videamus:[3] 'Iuro ego ad haec sancta Dei evangelia, quod a modo[4] ero fidelis huic, sicut debet esse vasallus domino, nec id, quod mihi sub nomine fidelitatis commiserit,[5] pandam alii ad eius detrimentum me sciente'. [*V2* 2.5.1] Si vero domesticus, id est familiaris, eius sit, cui iurat, aut si ideo iurat fidelitatem, non quod feudum habeat sed quia sub iurisdictione eius sit, cui iurat, nominatim vitam, membrum, mentem, et illius[6] rectum honorem iurabit.

### [LF 2.6]
### De forma fidelitatis

In epistola Philiberti episcopi in Decretis causa .xxii.[7] De forma fidelitatis aliquid scribere monitus haec vobis, quae sequuntur, breviter ex librorum auctoritate notavi. Qui domino suo fidelitatem iurat, ista sex in memoria semper habere debet: incolume, tutum, honestum, utile, facile, possibile. Incolume, ne sit in damno domino suo de corpore suo; tutum, ne sit ei in damno de secreto suo vel de munitionibus suis, per quas tutus esse potest; honestum, ne sit ei in damno de sua iustitia vel de aliis causis, quae ad honestatem eius pertinere noscuntur; utile, ne sit ei in damno de suis possessionibus; facile vel possibile, ne id bonum, quod dominus suus facere poterat leviter, faciat ei difficile neve id, quod possibile ei erat, faciat impossibile.

[1] *V2* Utrum autem praecedere debeat fidelitas investituram, an investitura fidelitatem. [2] *V2* Fidelitatem autem. [3] *V2* videamus. Iurare scilicet sic debet. [4] *V2* quod a modo in antea. [5] *V2* commiserit dominus. [6] *V2* eius. [7] *Decr. C. 22, q. 5, c. 18.*

## [LF 2.4]
## What ought to come first, investiture or [the oath of] fealty?

[pr.] I know that it is asked whether investiture ought to come before [the oath of] fealty, or [the oath of] fealty ought to come before investiture, and it has been often answered that investiture ought to come before [the oath of] fealty.

[§ 1] We call 'fealty' the oath that is sworn by a vassal to a lord.

## [LF 2.5]
## How a vassal ought to swear fealty

Let us see how a vassal ought to swear fealty:[1] 'I swear on these Holy Gospels of God that I shall henceforth be faithful to this man as a vassal ought to be faithful to a lord, neither shall I wittingly reveal to anyone, to his detriment, that which he has entrusted to me on invocation of fealty'. [*V2* 2.5.1] However, if the oath-taker is a member of the household, i.e. a personal servant, of him to whom he swears, or if he swears fealty not to have a fief but because he is under the jurisdiction of him to whom he swears, he shall swear expressly [to protect] his life, body, mind, and rightful honour.

## [LF 2.6]
## Concerning the form of [the oath of] fealty

From the letter of Bishop Fulbert, in *Causa 22* of Gratian's Decretum (Decr. C. 22, q. 5, c. 18). Being urged to write something about the form of [the oath of] fealty, I have briefly noted for you, from the authority of books, these things which follow. He who swears fealty to his lord ought always to bear in mind these six [words]: unharmed, safe, honourable, profitable, easy, and possible. Unharmed, as he should not harm his lord with regard to his body. Safe, as he should not harm him with regard to his secrets or the defences through which he can be safe. Honourable, as he should not harm him with regard to his justice or other matters that are known to relate to his honour. Profitable, as he should not harm him with regard to his possessions. Easy or possible, as he should not make difficult the good which his lord can easily do, nor make impossible what is possible for him.

[1] *V2* to swear fealty. He ought to swear as follows.

Ut fidelis haec documenta[1] caveat, iustum est. Sed quia non sufficit abstinere a malo, nisi faciat quod bonum est, restat, ut in sex praedictis consilium et auxilium domino praestet, si beneficio vult dignus videri et de fidelitate esse salvus, quam ei iuravit.[2] Dominus quoque in his omnibus vicem fideli suo reddere debet. Quod si non fecerit, merito censebitur malefidus, sicut ille, qui in eorum praevaricatione vel faciendo vel consentiendo deprehensus fuerit perfidus et periurus.

## [LF 2.7]
## De nova fidelitatis forma

[pr.] Est et alia de novo super fidelitatis iuramento forma inventa et utentium approbata consuetudine, quae hodie in omni fere curia videtur obtinere, haec scilicet: 'Ego Titius iuro super haec sancta Dei evangelia, quod ab hac die[3] inantea usque ad ultimum diem vitae meae ero fidelis tibi Caio, domino meo, contra omnem hominem excepto imperatore vel rege.' Quod verbum, si recte intelligatur, nulla quidem indiget adiectione, sed integram et perfectam in se continet fidelitatem.

Sed propter simplices et nominis significationis ignaros ad illius verbi interpretationem hoc adiici solet. 'Id est iuro, quod nunquam scienter ero in consilio vel in auxilio[4] vel in facto, quod tu amittas vitam vel membrum aliquod vel quod tu recipias in persona aliquam laesionem vel iniuriam vel contumeliam vel quod tu amittas aliquem honorem, quem nunc habes vel inantea possidebis. Et si scivero vel audivero de aliquo, qui velit aliquid istorum contra te facere, pro posse meo, ut non fiat, impedimentum praestabo, et si impedimentum praestare nequivero, quam cito potero, tibi nuntiabo et contra eum, prout potero, tibi meum auxilium praestabo. Et si contigerit, te rem aliquam, quam habes vel habebis, iniuste vel fortuito casu amittere, eam recuperare iurabo[5] et recuperatam omni tempore retinere. Et si scivero, te velle iuste offendere aliquem et inde generaliter vel specialiter fuero requisitus, meum tibi, sicut potero, praestabo auxilium. Et si aliquid mihi de secreto manifestaveris, illud sine tua licentia nemini pandam vel, per quod pandatur, faciam. Et si consilium mihi super aliquo facto postulaveris, illud tibi dabo consilium, quod mihi vide-

[1] *V2 and Decr.* nocumenta. [2] *V2 omits* quam ei iuravit. [3] *V2* ab hac hora. [4] *V2 omits* vel in auxilio. [5] *V2* iuvabo.

It is just that a loyal man[1] be mindful of these teachings.[2] However, since it is not sufficient to abstain from evil if one does not do what is good,[3] it remains that he is to give counsel and aid to his lord concerning the aforesaid six [things] if he wishes to be considered worthy of the benefice and reliable concerning the fealty which he swore to him. The lord also ought to reciprocally behave toward his loyal man in respect of all these. If he does not, he shall be deservedly considered unfaithful, just as he who is deemed disloyal and a perjurer for disobeying them, whether by doing or consenting to them.

## [LF 2.7]
## Concerning the new form of [the oath of] fealty

[pr.] There is also another form concerning the oath of fealty which has been recently conceived and approved by the custom of those who use it, which today seems to hold in nearly all courts, i.e.: 'I, Titius, swear on these Holy Gospels of God that from this day onwards until the last day of my life I shall be faithful to you, Caius, my lord, against all men except the emperor or the king.' This sentence, if correctly interpreted, does not require any addition, but contains within itself a full and complete [oath of] fealty.

However, for the sake of simple people and those who do not know the meaning of that term [i.e. faithful], it is usual to add what follows to explain that sentence. 'I.e., I swear that I shall never wittingly provide counsel or aid or activity so that you lose your life or limb, receive any personal harm, injury, or insult, or lose any honour which you now have or will henceforth possess. And if I know or hear of anyone who wants to do any of these things against you, I shall prevent it from being done to the best of my ability. And if I am not able to prevent it, I shall inform you as soon as I can and make available to you my support against him to my full capacity. And if it happens that you lose, unjustly or fortuitously, anything that you now have or will have, I shall help[4] you to recover it and to retain perpetually what has been recovered. And if I know that you wish to attack someone on just grounds, and thence I am summoned, whether in general or particular terms, I shall offer you support to my full capacity. And if you reveal to me anything secret, I shall not disclose it to anyone without your permission, nor do anything through which it might be disclosed. And if you require my counsel concerning any matter, I shall give

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[1] *'Fidelis', i.e., a man bound by an oath of fealty: see Glossary.* [2] *V2* of these causes of nuisance.
[3] *V2* unless something good is done. [4] *I follow here V2* iuvabo (= *'I shall help'*), *rather than V1* iurabo (= *'I shall swear'*).

bitur magis expedire tibi. Et nunquam ex persona mea aliquid faciam scienter, quod pertineat ad tuam vel tuorum iniuriam vel contumeliam.'

[§ 1] Investitura vero facta et fidelitate subsecuta omnimodo cogatur dominus, investitum in vacuam possessionem mittere. Quod si differat, omnem utilitatem ei praestabit.

### [LF 2.8]
### De investitura de re aliena facta

[pr.] Cum de re aliena vel alii obligata fiat investitura, illud distingui debet,[1] utrum scienti an ignoranti facta sit. Qui enim rei alienae sciens investituram suscepit,[2] nisi pacto speciali sibi prospexerit, de evictione agere non potest,[3] ignorans vero recte agit, ut aliud eiusdem bonitatis seu quantitatis ei praestetur. Sed in eo nulla est differentia, qui investituram fecit, utrum sciverit an ignoraverit.

[§ 1] Rei autem per beneficium recte investitae vasallus hanc habeat potestatem, ut tanquam dominus possit ab omni possidente quasi vindicare[4] et, si ab alio eiusdem rei nomine conveniatur, defensionem opponere. Nam et servitutes eiusdem rei debitas[5] petere potest et retinere. [*V2* 2.8.2] Quid ergo si pretio vel dolo vel incuria servitutem rei beneficiariae imponi patiatur et ad dominum ex aliqua causa[6] postea beneficium revertatur, an ex eo praeiudicium domino generetur quaesitum fuit. Et responsum est, ut vasallo quidem, donec feudum tenet, possit obesse, domino autem, etsi per longa tempora servitus perseveraverit, non noceat.[7]

[§ 2] [*V2* 2.8.3] E contrario,[8] si quid feudo a vasallo additum sit, si quidem tale sit,[9] quod per se subsistere possit, id est ut per se censeatur, ut praedium, id non accrescit feudo. Si vero per se non possit subsistere, ut servitus, plerisque placet, feudo accedere et sicut partem feudi disponendam esse. Meliorem namque feudi conditionem facere potest, deteriorem vero sine domini voluntate vel eorum agnatorum, ad quos per successionem pertinet, facere non potest.

[1] *V2* illud distinguitur. [2] *V2* accepit. [3] *V2* non poterit. [4] *V2* sibi quasi vindicare. [5] *V2* servitutem eidem rei debitam. [6] *V2* ex qualibet causa. [7] *V2* minime noceat. [8] *V2* E contrario autem. [9] *V2* si quidem tale adiectum sit.

you the counsel that I believe to benefit you most. And I shall never wittingly do anything on my own account that might aim at harming or insulting you and yours.'

[§1] However, once investiture has been made, and [the oath of] fealty has followed, the lord is to be by all means compelled to put the grantee into unimpeded possession. If he delays, he shall pay him all profits.

## [LF 2.8]
## Concerning investiture that is made of someone else's property

[pr.] When investiture is made regarding something that belongs to another or has been tied up in pledge to another, one ought to distinguish whether it is made to someone who knows or is ignorant of it. For he who wittingly has received investiture of someone else's thing cannot bring an action for eviction unless a specific agreement provides for it. However, he who [receives it] unwittingly can rightly bring an action to be given another [thing] of the same quality and extent. However, with respect to this matter, there is no difference as to whether he who made the investiture knows of it or is ignorant of it.

[§1] A vassal, rightly invested with something as a benefice, is to have the capacity to quasi-vindicate[1] it from any possessor as if he were its owner and, if he is brought to court by another person on account of that same thing, to mount a defence [against him]. Indeed, he can also seek and retain the easements that are due to that thing. [*V2* 2.8.2] What, therefore, if an easement is allowed to be imposed on the thing granted in benefice, either for a price, by deceit, or neglect, and afterwards, for any reason, the benefice reverts to the lord? It was asked, can any prejudice to the lord result from this? And it was answered that [this easement] may certainly damage the vassal as long as he holds the fief, but it is not to be harmful to the lord, even though the easement has persisted for a long time.

[§2] [*V2* 2.8.3] Conversely, if something is added to a fief by the vassal, if indeed it is of such kind that it can subsist on its own—i.e. which is to be assessed as self-standing, like a piece of land—it does not accrue to the fief. However, if it cannot subsist on its own, as with an easement, many agree that it is added to the fief and must be managed just as a part of the fief. For [a vassal] can improve the condition of a fief but cannot worsen it without the consent of the lord and those agnates to whom the fief belongs by succession. [V2 2.8.4]

[1] *For 'vindicare', see Glossary.*

[*V2* 2.8.4] Quamvis enim per beneficium[1] ad eum pertineat, tamen proprietas ad alium spectat; et ideo quartae sive tertiae ratione, quae a Lombardis seu Romanis viris uxoribus fieri solet, post mortem viri ad uxorem nihil pertinet. Nam nec pignus, quod consultum dicitur, ex feudo fieri potest.

## [LF 2.9]
## Qualiter olim feudum poterat alienari

[pr.] Est autem optima consuetudine interdicta feudi alienatio. Super qua multae et diversae sententiae dabantur in singulis civitatibus seu curiis, donec imperator divae memoriae Lotharius tertius super hoc novam promulgavit constitutionem, quae posita est in titulo de beneficiis.[2] [*V2* 2.9.1] Necessitate namque suadente poterat olim vasallus domino inscio vel invito feudi partem vendere retenta videlicet alia parte. [*V2* 2.9.2] Si vero vel totum vel partem volebat per feudum aliquem investire, licebat hoc ei sine fraude facere. Sive autem dissentiente domino vendebat sive per feudum investiebat—quod et ipsum sincere hodie et sine fraude licet ei facere—si tamen sine herede masculo descendente decedebat vel feudum in manu domini refutabat aut alia ratione, culpa forte intercedente,[3] amittebat, tunc omnis feudi alienatio ad irritum devocabatur,[4] eo excepto quod ille, qui secundo loco beneficium acceperat, non amittebat, si priori domino servire et ab eo feudum recognoscere volebat.

[*V2* 2.9.3] Donare autem aut pro anima iudicare vel in dotem pro filia dare nullius curiae poterat consuetudine, licet posset locare, nisi locatio esset fraudulenta alienatio, sicut est per libellum, ut dicatur,[5] venditio. Quis enim dubitat, quod libellario nomine sub vilissima duorum denariorum pensione perpetuo conceditur[6] utendum, in fraudem esse alienatum? Porro sive de bona consuetudine sive de prava quaeramus, concessa erat domino pro equali pretio redemptio, nisi hoc beneficium amiserit per refutationem[7] vel annali silentio, ex quo sciverit, computando. Praescriptione autem triginta annorum submo-

[1] *V2* Quamvis enim possessio per beneficium. [2] *Lomb.* *3.8.*[*5*]. [3] *V2* alia ratione intercedente, forte culpa. [4] *V2* revocabatur. [5] *V2* ut dicunt. [6] *V2* concedatur. [7] *V2* amiserit dominus per refutationem.

For although it belongs to him through benefice,[1] nonetheless its ownership pertains to another. And for this reason, on account of the fourth or third portions [of wealth] that Lombard and Roman men respectively are accustomed to bestowing on their wives, after a husband's death nothing [of his fief] belongs to the wife. Nor, indeed, can the pledge that is called *consultum* be made out of a fief[2].

## [LF 2.9]
## How a fief could be alienated formerly

[pr.] Furthermore, alienation of a fief is forbidden by an excellent custom. On this matter, many and diverse opinions used to be given in each city or court, until Emperor Lothair III, of blessed memory, promulgated a new constitution about this, which was placed under the title 'Concerning benefices' (Lomb. 3.8.[5]). [*V2* 2.9.1] Indeed, if pressed by necessity, a vassal used to be able to sell a portion of a fief with the lord not knowing or unwilling, while retaining the remaining portion. [*V2* 2.9.2] If, however, he wished to invest all or part as a fief, he was permitted to do so without fraud. Moreover, regardless of whether he sold it or invested it as a fief with the lord dissenting—which today he is permitted to do openly and without fraud[3]—nonetheless, if he died without a male heir descending from him, or renounced the fief into the hands of the lord, or lost it for some other reason, perhaps by his own fault, then the whole alienation of the fief was declared invalid. This exception was made that he who had in the second place received the benefice did not lose it if he was willing to serve the prior lord and acknowledge holding the fief from him.

[*V2* 2.9.3] However, by the custom of no court could he donate it, or bestow it for the salvation of his soul, or give it in dowry for a daughter, although he could give it on lease—unless the lease were a fraudulent alienation, like the so-called 'sale by lease'. Because who doubts that what is granted by way of lease for perpetual use against payment of an insignificant rent, such as two 'denarii', is sold with deceit? Furthermore, no matter if we inquire on the basis of good or bad custom, re-purchase was granted to the lord for an equal price, provided that he had not lost the benefice by renouncing it or staying silent for one year, counted from the moment he knew [of the alienation]. However, on the grounds of thirty-year prescription,[4] he could be turned down regardless of

[1] *V2* Although possession belongs to him through benefice. [2] *I.e., a marital pledge: for 'consultum', see Glossary.* [3] *This aside refers to subinfeudation made without a lord's approval, not to sale.* [4] *On 'praescriptio', see Glossary.*

vebatur tam sciens quam ignorans. In prohibendo autem vel redimendo potior erat proximi agnati quam domini conditio, si tamen feudum erat paternum.

[§1] [*V2* 2.9.4] De illa vero feudi alienatione, quae a domino fit, si dubitetur, lex imperatoris Conradi consulatur, quae posita est in iam dicto titulo de beneficiis.[1]

## [LF 2.10]
## Quis dicatur dux, marchio, comes sive capitaneus vel valvasor

Qui a principe de ducatu aliquo investitus est, dux solito more vocatur. Qui vero de marchia, marchio dicitur. Dicitur autem marchia quia *cara*, id est collocata, et iuxta mare plerumque sit posita.[2] Qui vero de aliquo comitatu investitus est, comes appellatur. Qui vero a principe vel ab aliqua potestate de plebe aliqua vel plebis parte per feudum investitus est, is capitaneus appellatur, qui proprie valvasor maior olim dicebatur. Qui vero a capitaneis antiquitus feudum tenent, valvasores sunt. Qui autem a valvasoribus feudum, quod a capitaneis habebatur,[3] similiter acceperint, valvasini, id est minores valvasores, appellantur. Qui antiquo quidem usu nullam feudi consuetudinem habebant. Valvasore enim sine filio mortuo feudum, quod valvasino dederat,[4] ad capitaneum revertebatur. Sed hodie eodem iure utuntur in curia Mediolanensi, quo et valvasores. Ceteri vero, qui ab antiquis temporibus beneficium non tenent, licet noviter a capitaneis seu valvasoribus acquisierint, plebeii nihilominus sunt. Nam et hi, qui soldatam acceperunt vel habuerunt,[5] per eam nullum paradegium[6] sed nec feudi usum acquirunt.

[*V2* 2.10.1] Soldata autem est praestatio quaedam annua et gratuita, quae a neutra parte transit in heredem. Morte enim dantis vel accipientis finitur.[7] Soldata vero dicitur, quia plerumque in solidorum datione consistit, quandoque enim in vino et annona consistit.

[1] *Lomb. 3.8.4*. [2] *V2* Dicitur autem marchio, qui tenet quod est iuxta mare, quia plerumque marchia iuxta mare sit posita. [3] *V2* quod a capitaneis tenent. [4] *V2* quod valvasori minori dederat. [5] *V2* Nam et illi qui soldatam habuerunt, vel acceperunt, vel habent. [6] *V2* paragium. [7] *V2* vel accipientis interveniente finitur.

whether he knew [of the alienation] or was ignorant of it. Also, in both prohibiting and buying back, the legal position of a close agnate was stronger than the lord's, if the fief was ancestral.

[§1] [*V2* 2.9.4] But if doubts arise concerning the alienation that is made by a lord, one should consult the decree of Emperor Conrad [II], which has been placed in the aforesaid title 'Concerning benefices' (Lomb. 3.8.4).

## [LF 2.10]
## Who is to be called a duke, a marquess, a count, a 'capitaneus', or a 'valvasor'

He who has been invested by the prince with any duchy is traditionally called a duke. And he who has been invested with a march is called a marquess, and a march is so called because it is often situated next to the sea [Lat. 'mare'].[1] And he who has been invested with any county is called a count. And he who has been invested in fief by the prince or any other public authority with some 'plebs',[2] or part of it, is called a 'capitaneus'—who was once rightly called greater 'valvasor'. And they who have held a fief from the 'capitanei' since times of old are 'valvasores'. Moreover, they who in a similar way receive from 'valvasores' a fief that the latter had from 'capitanei', are called 'valvasini', i.e. lesser 'valvasores'. By old usage, they had no custom of fiefs,[3] for when a 'valvasor' died without a son, the fief he had given to a 'valvasinus' reverted to his 'capitaneus'. But today, in the Milanese court, they [i.e. 'valvasini'] enjoy the same right as 'valvasores'. Indeed, others who have not held a benefice from earlier times, even though they have recently acquired one from 'capitanei' or 'valvasores', are nonetheless commoners. Indeed, also those who received or had a 'soldata' do not acquire through it noble rank, nor the usage of fiefs.

[*V2* 2.10.1] A 'soldata' is an annual and gratuitous payment that is not transmitted to the heir by either party, as it ends with the death of either the giver or the receiver. However, it is called 'soldata' because it most often consists of bestowal of money ('solidi'); sometimes, however, it consists of wine or crops.

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[1] *V2* He who holds what is by the sea, is indeed called marquess, because a march is often situated nearby the sea. *The tradition of this passage is complicated. V1 and V2 are inconsistent while Ant. provides a third version ('Dicitur autem marchia quia* cata, *hoc est iuxta mare plerumque sit posita')—perhaps* cata *is from Greek (κατά) and replaces 'iuxta' or 'circa'. All these versions report a mistaken etymology, individuating 'sea' (Lat. 'mare') as the root of 'marchia', which actually derives from the Germanic term 'mark' (see also the Latin term 'margo, marginis') standing for 'boundary', hence borderland.* [2] *For 'plebs' see Glossary.* [3] *I.e., no custom regulating these lesser fiefs had been established. Alternatively: they had no part in the custom of fiefs established for the greater fief-holders.*

## [LF 2.11]
## De gradibus succedendi in feudum[1]

Per successionem quoque sicut per investituram beneficium ad nos pertinet. Mortuo enim eo qui beneficium tenebat, prima causa liberorum est. Filiis enim existentibus masculis vel ex filio nepotibus vel deinceps per masculinum sexum descendentibus ceteri removentur agnati. Ad filias vero seu neptes vel proneptes vel ex filia nepotes seu pronepotes successio feudi non pertinet. Proles enim feminini sexus vel ex feminino[2] sexu descendens ad huiusmodi successionem adspirare non potest, nisi eius conditionis sit feudum vel eo pacto adquisitum.

His vero deficientibus vocantur primo fratres cum fratrum praemortuorum filiis, deinde agnati ulteriores. Quod ita intelligendum est, si feudum sit paternum, hoc est si fuit illius parentis, qui eius fuit agnationis communis. Si enim Titii avus de novo beneficio fuerit investitus, Titio sine legitimo herede masculo defuncto, eius feudi successio non pertinet ad eiusdem Titii patruum magnum nec ad prolem ex eo descendentem, immo revertitur ad dominum. Ad cognatos autem beneficii successio non pertinet.[3]

Si vero dominus vel alius beneficium defuncti novum esse dicat, agnatus autem illius proximus paternum esse contendat, tunc onus probationis incumbit illi, qui novum dicit. Sed scio, aliter pronunciatum esse. Bonus autem iudex causa cognita diligenter intuebitur, cuius potius iureiurando dirimenda sit haec quaestio, utroque scilicet in probatione deficiente.

## [LF 2.12]
## De fratribus de novo beneficio investitis

[pr.] Si duo fratres de novo beneficio et non de paterno simul investiti fuerint, uno sine herede defuncto, ad alterum non pertinet eius portio,[4] nisi facta sit eo pacto investitura.

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[1] *V2* De successione fratrum vel gradibus succedentium in feudo. [2] *V2* feminei sexus vel ex femineo. [3] *V2* Ad cognatos autem eius beneficium non pertinet, neque beneficii successio. [4] *V2* eius beneficii portio.

## [LF 2.11]
## Concerning the degrees [of relationship] for succeeding to a fief[1]

A benefice belongs to us through succession just as through investiture. For once he who held a benefice has died, the strongest claim is that of his children, for when sons are left, or grandsons from his sons, or further descending heirs through the male sex, the other agnates are excluded. But succession to a fief does not belong to daughters, granddaughters, great-granddaughters, or to grandsons or great-grandsons through the female line. For the offspring of the female sex, or descending from the female sex, cannot aspire to such succession unless the fief is of that condition or has been acquired according to such an agreement.

When no [descendants] are left, brothers and sons of deceased brothers are first called [to succeed], and then the more distant agnates. This is to be understood if the fief is ancestral, i.e. if it was of an ancestor belonging to the same patrilineage. For if Titius's grandfather is invested with a new benefice, when Titius dies without a lawful male heir, succession to his fief does not belong to Titius's great-uncle nor to the offspring descending from him, but it reverts to the lord. Furthermore, succession to a benefice does not belong to relatives in the female line.[2]

However, if the lord or anyone else says that the benefice of the deceased is new, but the latter's closest agnate contends that it is ancestral, then the burden of proof falls upon the one who says it is new—but I know that this matter has been judged differently. Furthermore, a good judge, after taking cognisance of the case, shall thoroughly consider by whose oath this question should be better decided when both parties fail in their proof.

## [LF 2.12]
## Concerning brothers invested with a new benefice

[pr.] If two brothers are invested at the same time with a new benefice, not an ancestral one, when one has died without heir, his portion does not belong to the other unless investiture is made according to that agreement.

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[1] *V2* Concerning succession of brothers and the degrees [of relationship] of successors to a fief.
[2] *V2* Furthermore, his benefice does not belong to relatives in the female line, nor does succession to that benefice.

[§1] Si duo fratres in casa communi[1] post mortem patris remanserint, id est simul habitaverint,[2] et unus eorum feudum acquisierit, plerique dicunt, ad alium non pertinere, neque vivente eo, qui acquisierit, neque post mortem eius;[3] fructus tamen erunt communes, donec simul habitaverint. Quodsi cum equis et armis communibus vel pecunia communi sit acquisitum, adhuc idem dicunt, ne forte invitus dominus alium, quam quem voluerit, sibi acquirat vasallum, dum tamen meminerimus, id quod de communi expensum est, alteri pro parte competenti esse restituendum.

## [LF 2.13]
## De investitura, quam Titius accepit a Sempronio

A Sempronio talem feudi investituram accepit Titius,[4] 'ut haberet ipse heredesque sui legitimi masculi et his[5] deficientibus feminae'. Porro Titius superstite tantum filia decessit. Ipsa a domino investita fuit et feudum in dotem dedit maritoque superstite sine liberis decessit. Quaerebatur, si ad maritum successio feudi pertineat. Responsum est, non pertinere.

## [LF 2.14]
## De vasallo decrepitae aetatis, qui beneficium refutavit, ut filii investirentur

Quidam vasallus, cum decrepitae aetatis esset, feudum suum in manu domini ad hoc refutavit, 'ut Sempronium et Seium, filios suos, de eodem beneficio investiret'. Vasallo mortuo Sempronius sine legitimo herede Seio adhuc superstite decessit. Lis est inter dominum, tanquam novum feudum sibi delatum esse dicentem, et Seium paternum esse contendentem. Et eorum sententia praevalebit,[6] qui dixerunt, hoc feudum, quamvis refutatum, nihilominus esse paternum.

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[1] *V2* in causa communi. [2] *V2* id est habitaverint insimul. [3] *V2* plerique dicunt ad alium non pertinere [sed ad dominum, nisi per pactum, sed] neque vivente eo, qui acquisierit, neque post mortem eius. [4] *V2* Titius a Sempronio talem investituram accepit feudi. [5] *V2* iis. [6] *V2* praevaluit.

[§1] If two brothers reside in the same household after their father's death, i.e. they live there together, and one of them acquires a fief, many say that it belongs to the other neither while he who acquired it is alive, nor after his death;[1] its fruits, however, shall be shared for as long as they live together. They still say the same even if it has been acquired with common horses and arms or with joint wealth, lest the lord acquires, possibly against his will, a vassal different than the one he wanted. Nonetheless, we shall keep in mind that what is paid out of joint wealth must be restored to the other in proportion to his share.

### [LF 2.13]
### Concerning investiture that Titius received from Sempronius

Titius received investiture of a fief from Sempronius on such terms that he and his legitimate male heirs were to have it and, in their absence, females. Afterwards, Titius died with only a daughter surviving. She was invested by the lord, gave the fief in dowry [to her husband], and died without children, with the husband surviving. It was asked whether succession to the fief belongs to the husband. It has been answered that it does not belong to him.

### [LF 2.14]
### Concerning a vassal of old age who renounced his benefice so that his sons be invested

A certain vassal, being of old age, renounced his fief into the hand of the lord so that he would invest his sons Sempronius and Seius with the same benefice. After the vassal died, Sempronius died without a lawful heir with Seius still surviving. [Now] there is a dispute between the lord, who says that as a new fief it passed back to him, and Seius, who contends it is ancestral. The opinion has prevailed of those who said that this fief, although it has been renounced, is nonetheless ancestral.

[1] *V2* many say that it does not belong to the other [but to the lord, unless through an agreement], neither while he who acquired it is alive, nor after his death.

## [LF 2.15]
## De investitura in maritum facta

Vasallus una tantum filia superstite decessit,[1] illa vero maritum accepit, cui dominus accepta pecunia partem feudi, quod pater puellae habebat, retenta sibi alia parte dedit. Sed[2] nunc quidam agnatus defuncti cum marito agit dicendo[3] totum hoc feudum esse paternum et ideo[4] ad se devolutum. Econtra maritus contendit, hanc partem, quam ipse habet, novum esse feudum et ideo domino apertum. Quaeritur igitur, utrum apud eundem dominum et in eius curia cogatur agnatus defuncti litigare an apud agnati iudicem vel arbitrum utriusque consensu electum hoc esse debeat. Et mihi et aliis placet, potius apud iudicem ordinarium vel arbitrum, quam apud eundem dominum hoc litigium fore[5] terminandum.

[*V2* 2.15.1] Item placet, agnatum non semper cogendum probare, hoc feudum esse paternum, sed ab adversa parte novum esse probandum; qua deficiente in probatione tunc agnato, ut supra diximus, causa cognita detur electio, quatenus vel iuret, esse paternum, vel alteri parti referat iusiurandum, et ille aut iuret aut taceat. Illud tamen sciendum est, quod si inter duos, qui dixerunt,[6] se esse vasallos, de feudo fuerit dubitatio, alter alterum invitum non potest trahere ad dominum vel eius curiae iudicium. Si vero dominus cum sua curia vocaverit eos, nemini eorum licet illius domini vel eius curiae examen dedignari.[7]

## [LF 2.16]
## De controversia feudi apud pares terminanda

Si inter dominum et vasallum de feudo orta fuerit contentio, per pares illius domus, sicut lex Conradi dicit, dirimatur, si tamen pares habeat. Et si quidem dominus et vasallus consentiant in eligendis paribus, nulla dubitatio est. Si vero

[1] *V2* Vasallus superstite tantum una filia decessit. [2] *V2 omits* Sed. [3] *V2* dicens. [4] *V2* et ideo omnimodo. [5] *V2 omits* fore. [6] *V2* dixerint. [7] *V2* declinare.

## [LF 2.15]
## Concerning investiture made to a husband

A vassal died with only one daughter surviving, and she took a husband to whom the lord, having received money, gave part of the fief that the girl's father had, retaining the other part. Now, however, a certain agnate of the deceased brings an action against the husband, saying that all this fief is ancestral and, therefore, has devolved to him. The husband contends to the contrary that this portion that he has was a new fief and, therefore, had become vacant for the lord.[1] It is consequently asked whether the agnate of the deceased is to be compelled to bring the case before the same lord and in his court, or whether this ought to be before the [ordinary] judge of the agnate[2] or an arbitrator chosen with the consent of both parties. And it seems correct both to me and to other judges that this case shall be determined before an ordinary judge or an arbitrator rather than before the same lord.

[*V2* 2.15.1] It also seems correct that the agnate should not always be compelled to prove that this fief is ancestral, but the other party should prove that it is new. If the latter fails in making proof, then, as we have said before, once cognisance of the case has been taken, the agnate is to be given the choice to either swear that it is ancestral or hand over the oath to the other party, and this one is to either swear or stay silent. This must be known, however, that if there is uncertainty over a fief between two persons who say that they are vassals, one cannot bring the other against his will before the lord or to the judgment of his court. But if the lord with his court summons them, neither may refuse the trial of that lord or his court.

## [LF 2.16]
## On determining a dispute over a fief before the peers

If a dispute has arisen between a lord and a vassal over a fief, it is to be resolved, as Conrad's decree states, by the peers of that household, if, actually, [the vassal] has peers. And if indeed the lord and the vassal agree on the peers to be

[1] *The husband, as the purchaser of land which used to be a fief, is not claiming to hold it as a fief. He is claiming that what he has bought had formerly belonged to a fief which his wife's deceased father had held as a 'feudum novum' and which therefore had reverted to the lord when that vassal died leaving only a daughter. The agnate is claiming, by contrast, that the entire fief held by the deceased vassal had been ancestral. The husband is therefore arguing that the lord was within his rights to sell part of that fief. This situation clarifies the following text, since should both claim to be vassals of the same lord, the question of which judge to approach would not arise.* [2] *I.e. a competent judge before whom the agnate is to bring an action.*

dissenserint,[1] tunc quid faciendum sit quaeritur. Sed praevaluit eorum sententia, qui dixerunt dominum debere eligere prius, quem aut quos voluerit, et vasallus similiter hoc faciat secundum numerum a domino comprobatum. Ille tamen vasallus, qui fidelitatem domino non iuravit, domino vel vasallo dissentiente, pro pari non est eligendus.

## [LF 2.17] De eo, qui sibi et heredibus suis, masculis et feminis, investituram accepit

Qui 'sibi vel heredibus suis masculis et his deficientibus feminis' per beneficium investituram feudi accepit, una tantum filia superstite, nullo alio descendente relicto, decessit. Haec marito paternum feudum in dotem dedit et duobus filiis ex eo procreatis obiit, quorum unus duas filias reliquit, alter vero uno filio masculo superstite defunctus est.[2] De praedicto itaque feudo ingentem vidimus quaestionem, masculo quidem hoc feudum totum sibi, quia solus eius, qui primo investituram accepit, heres masculus sit, vindicante, feminis vero totam sui patris partem sibi defendentibus, quia ex eo nullus exstitit masculus.

Cumque inter sapientes saepe super hac quaestione sit disputatum, tandem pro masculo pronuntiatum est. Non enim patet locus feminae in feudi successione, donec masculus superest ex eo, qui primus de hoc feudo fuerit investitus. Nam et illud iudicatum scio, si ille, qui proprium suum feudum militi per beneficium[3] dedit, duobus filiis relictis decesserit, quorum unus filia tantum relicta obiit, alter vero filio masculo superstite decessit,[4] quod miles non debet feudum suum per feminam recognoscere, donec superest masculus ex eo, qui primam investituram fecit. Alii dicunt, per filiam debet cognoscere.[5]

[1] *V2* dissentiant. [2] *V2* filio masculo relicto decesserit. [3] *V2* pro beneficio. [4] *V2* defunctus est. [5] *V2 adds* quum de paterno allodio esset hoc feudum, alioqui si aliunde esset, verum esset, quod dicitur, per feminam non debere recognoscere.

chosen, there is no uncertainty. If, however, they disagree, then it is asked what should be done. The opinion prevailed of those who said that the lord first ought to choose the one or ones whom he wishes, and then the vassal is to do the same, following the number [of peers] approved by the lord. However, such a vassal who has not sworn fealty to the lord must not be chosen as a peer, should either the lord or the vassal dissent.

### [LF 2.17]
### Concerning him who has received investiture for himself and his heirs, male and female

Someone who received investiture of a fief through benefice 'for himself and his male heirs and, in their absence, his female heirs' died with only one daughter surviving, with no other descendant left. She gave the ancestral fief in dowry to her husband and passed away after giving birth to two sons from him. One of these sons left two daughters, but the other one died with one surviving son. We have looked into a remarkable question concerning the aforesaid fief: the male claims the entire fief for himself because he is the only male heir of him who first received investiture; the females, however, defend all their father's portion because there is no extant male born from him.

Since there has often been dispute among experts over this question, it was ultimately pronounced in favour of the male, for there is no opening for a woman in the succession to a fief as long as a male survives from him who was first invested with this fief. Indeed, I know it has also been judged that if he who gave his own fief in benefice to a knight died leaving two sons, one of whom passed away leaving only a daughter, and the other died with a surviving son, then the knight ought not to acknowledge holding his fief from the female as long as a male survives from him who made the first investiture. Others say that he ought to acknowledge holding the fief from the daughter.[1]

[1] *V2* Others say that he ought to acknowledge holding the fief from the daughter, if this fief comes from her father's allodial property. If otherwise, it would be right what is said, i.e. that he ought not to acknowledge holding it from the female.

## [LF 2.18]
## De duobus fratribus a capitaneo investitis

Duo fratres, Titius et Seius, a quodam capitaneo de novo beneficio simul investiti sunt eo videlicet tenore, 'ut quamdiu ipsi vel eorum heredes masculi viverent et masculis deficientibus feminae, si superessent, feudum haberent'. Ex his fratribus unus una filia relicta, altero adhuc vivente, decessit. Quaeritur de portione defuncti, cui deferatur,[1] utrum filiae an fratri. Respondetur, filiae. Unusquisque enim sibi suisque heredibus videtur prospexisse. Si tamen is, qui filiam reliquit, sine herede decessisset, propter tenorem investiturae insertum eius pars fratri, non domino est quaesita.[2]

## [LF 2.19]
## An removeri debeant testes qui pares esse desierunt

Ex facto quaesitum esse scio, si inter dominum et fidelem de investitura feudi contentio emerserit, quia factam eam dominus neget, si vasallus afferat[3] eos testes, qui tempore quidem investiturae pares erant, sed postea qualibet ex causa pares esse desierunt, an ideo sint removendi, quia nunc non sint pares? Sed quamvis alii aliud[4] sentiant, mihi tamen et quibusdam aliis videtur sufficere, eos tempore investiturae saltem pares fuisse. Quid enim peccavit, qui investituram accepit, si illi, quos eo tempore utpote idoneos adhibuit, postea pares esse desierunt?

## [LF 2.20]
## De controversia inter episcopum et vasallum

Ex eo, quod scriptum est, si inter dominum et vasallum de feudo nascatur quaestio, quod per pares eiusdem curiae sit dirimenda, quaesitum est: si quis dixerit, se a quodam, fortassis episcopo iam defuncto,[5] de annua praestatione aut alia qualibet re per feudum investituram accepisse, et cum successore eius agat, et ille respondendo neget, hunc esse vasallum, utrum per pares eiusdem curiae sit iudicandum super hac quaestione?

[1] *V2* Quaeritur cui portio defuncti deferatur. [2] *V2* non domino acquisita foret *for* non domino est quaesita. [3] *V2* offerat. [4] *V2* aliter. [5] *V2* a quodam episcopo, fortassis iam defuncto.

## [LF 2.18]
## Concerning two brothers invested by a 'capitaneus'

Two brothers, Titius and Seius, were invested jointly with a new benefice by a certain 'capitaneus' on these terms, that is: that they would have the fief as long as they or their male heirs lived and, in the absence of males, females, if any survived. One of these brothers died leaving one daughter, with the other brother still alive. It is asked to whom the portion of the deceased is to be transferred, whether to the daughter or the brother. It is answered to the daughter, for each [brother] is expected to provide for himself and his heirs. Nonetheless, had he who left a daughter died without heir, by the terms included in the investiture his portion would be assigned to the brother, not the lord.[1]

## [LF 2.19]
## Whether witnesses who ceased to be peers ought to be rejected

I know the question has been asked emerging from a real case: if a dispute over investiture of a fief arises between a lord and a vassal[2] because the lord denies having made it, and the latter presents as witnesses those who were certainly peers at the time of investiture, but afterwards, for some reason, ceased to be peers, are they to be rejected because they are not peers now? Even though others are of a different opinion, nonetheless, to me and some others, it seems sufficient that they were peers at least at the time of the investiture. After all, did he who received investiture commit any offence if they whom he called as suitable [witnesses] at that time ceased to be peers afterwards?

## [LF 2.20]
## Concerning a dispute between a bishop and a vassal

From what has been written[3]—i.e. that if a question concerning a fief emerges between a lord and a vassal it should be resolved by the peers of the same court—it has been asked: if someone says that he has received investiture as a fief of an annual payment or something else from, suppose, a bishop who has already died, and he brings an action against his successor, who answers by denying that he is his vassal, should judgment over this question be made through the peers of that court?

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[1] *My translation follows here V2.* [2] *For 'fidelis' as 'vassal', see Glossary.* [3] *See LF 1.10; 2.16.*

Opponit enim vasallus, quod dominus negat, suum esse vasallum[1] et ideo in ea curia pares non habet. Item dicit vasallus, quod prius de suo recto feudo debet investiri, quam a nemine iudicari. Domino respondente, quod, quidquid inter eos sive de investitura sive de fidelitate sive de principali causa est agendum, per suam curiam est expediendum. Sed laudatum saepe scio, pares illius curiae secundum praefatum modum esse prius eligendos, ad quorum spectat officium, ut eum prius de suo recto feudo investiri faciant, sed fidelitatis iusiurandum differatur, donec de principali causa cognoscatur. Ex illo enim apparebit, utrum iurare debeat an non, quod totum expeditae quaestionis est.

[*V2* 2.20.1] Sed si constiterit, vasallum aliquid aliud praeter id, de quo quaeritur, ab eodem domino pro feudo tenere, tunc enim,[2] quin debeat de suo recto feudo investituram accipere et fidelitatem iurare et sic ad principalem causam accedere, non est dubitandum.

### [LF 2.21]
### De vasallo milite qui arma bellica deposuit

Miles, qui beneficium tenebat, cum esset sine liberis, venerabilem domum intravit et saeculo renuntiando arma bellica deposuit habitumque religionis assumpsit et sic conversus effectus[3] est. Hic, donec vixerit, feudum retinere conatur, quod dominus vel agnatus sibi[4] pertinere contendit. Sed iudicatum est, domini vel agnati potiorem esse conditionem. Quia enim factus est miles Dei, desiit esse miles saeculi,[5] nec beneficium pertinet ad eum, qui non debet gerere officium.

### [LF 2.22]
### De milite vasallo qui contumax est

[pr.] Dominus vocat militem, qui ab eo feudum possidebat, dicendo, eum in culpam incidisse, per quam feudum amittere debeat. Hic non respondet. Quaeritur, quid faciendum sit domino. Respondeo, eum ad curiam vocari debere, et si non venerit, iterum eum debere vocari usque in tertio[6] spatio, septem vel

[1] *V2* quod dominus eum negat esse vasallum. [2] *V2 omits* enim. [3] *V2* factus est. [4] *V2* ad se *for* sibi. [5] *V2* esse conditionem, eo quod desiit esse miles saeculi qui factus est miles Christi. [6] *V2* in tertium.

For the vassal counters that since the lord denies that he is his vassal, he therefore has no peers in that court. The vassal then says that he ought to be invested with his rightful fief before being judged by anybody. The lord answers that whatever case is to be brought between them, whether about investiture, fealty, or the principal question [in dispute], it must be dealt with through his court. However, I know that it has been often decided that, in the first place, some peers of that court must be chosen in the aforesaid way,[1] to whom belongs the duty that they first make him be invested of his rightful fief. The oath of fealty, however, is to be deferred until cognisance of the principal question has been taken, for thereby it will be evident whether he ought to swear or not, which is the entire issue in the [principial] question, which has been dealt with.

[*V2* 2.20.1] However, if it results that the vassal holds as a fief from the same lord something else besides the thing in dispute, then it must not be doubted that he ought to receive investiture of his rightful fief, swear fealty, and thus proceed to the principal question.

## [LF 2.21]
## Concerning a vassal knight who laid down the battle weapons

A knight who held a benefice, being without children, entered a holy house and, renouncing the secular world, laid down his battle weapons and took on the religious habit, and so he was made a lay brother. He attempts to retain for as long as he lives the fief which the lord, or an agnate, contends belongs to him. However, it has been judged that the legal position of the lord or the agnate is stronger, because the man was made a knight of God and ceased to be a secular knight,[2] and a benefice does not belong to him who ought not to perform its duties.

## [LF 2.22]
## Concerning a vassal knight who is contumacious

[pr.] A lord summons a knight who possessed a fief from him, saying that he has made himself guilty of a fault for which he ought to lose the fief. This one does not answer. It is asked what should be done on the lord's part. I answer that he [i.e. the knight] ought to be summoned to court and, if he does not come, he ought to be summoned again until a third time, with intervals of seven to ten

[1] *See LF 2.16*. [2] *V2* because he who is made knight of Christ ceases to be a secular knight.

decem dierum arbitrio eiusdem curiae determinando. Quodsi neque venerit ad tertiam vocationem, hoc ipso feudum amittat, et ideo debet curia dominum mittere in possessionem. Sed si intra annum venerit, restituitur ei possessio; alioquin et beneficium et possessionem amittit, ut in Lombarda, de his qui ad placitum[1] venire contempserint l. Si cuiuscumque.[2]

[§ 1] Si vero vasallus de domino quaeritur,[3] forsan quia feudum malo ordine intravit, domino perperam respondente, quid vasallo faciendum sit, quaeritur. Respondeo: ipse curiam vocare debet[4] et in ea[5] curia de domino conqueri. Curia[6] debet adire dominum eumque salva reverentia competenter cogere, ut vel possessionem restituat et acquiescat vel iudicio curiae se committat. Quod si ter admonitus facere noluerit,[7] tunc liceat vasallo ad aliam maiorem potestatem ire et sibi consulere; et si dominus ei iustitiam facere noluerit, poterit eum depraedare.

## [LF 2.23]
## In quibus causis feudum amittatur

Obertus de Orto Anselmo filio suo salutem. Cogis me et super hoc saepe scribendo multum urges, ut causas, quibus beneficium amittatur, enumeratas tibi significarem. Quod ideo distuli, quia saepius circa nostrae reipublicae curam occupatus et multis privatorum causis aliisque rerum innumerabilium impedimentis detentus onus illud subire non valebam. Et[8] ne videar preces tuas parvi pendere et studium discendi tibi imminens[9] negligere, quid mihi super hoc videatur paucis verbis[10] explicabo, dummodo memineris, causas illas sub aliqua certa regula aut definitione rotunda non posse comprehendi.

Nam sicut de probationibus in Digestis scriptum reperimus,[11] sic et de his causis sine calumnia dicere possumus. Si quis enim dixerit, quae causae quemadmodum alicui domino ad ingratitudinem alicuius vasalli probandam possint sufficere, nullo certo modo posse definiri, non erraverit.[12]

De illa tamen ingratitudine loquor, per quam beneficium amittatur. Non enim ad hoc sufficit omnis occasio, per quam fidelis accepti beneficii videatur ingratus. Sed sunt quaedam, ut ita dixerim, egregiae ingratitudinis causae, quibus beneficium secundum mores curiarum solet adimi. Quomodo enim vasal-

[1] *V2* ad palatium. [2] *Lomb. 2.43.3*. [3] *V2* conquaeritur de domino. [4] *V2* eum curiam debere vocare. [5] *V2* in eadem. [6] *V2* Curia autem. [7] *V2* distulerit. [8] *V2* At. [9] *V2* tibi nunc imminens. [10] *V2 omits* verbis. [11] *Dig. 22.5.3.2*. [12] *V2* nihil erraverit.

days to be determined at the will of the same court. And if he does not appear even at the third summons, for this reason he is to lose the fief and, therefore, the court ought to put the lord into possession. However, if he appears within a year, possession is restored to him; otherwise, he loses both the benefice and possession, as in the Lombarda, 'Concerning those who refuse to appear at a plea', law 'If anyone' (Lomb. 2.43.3).

[§1] If, however, a vassal complains about the lord, perhaps because he occupied the fief improperly, and the lord answers wrongly, it is asked what should be done on the vassal's part. I answer that he ought to summon the court and complain about the lord in that court. The court ought to approach the lord and, with due reverence, compel him in appropriate manner either to restore possession and leave the matter be or to entrust himself to the judgment of the court. If he refuses to do this[1] after being notified three times, then the vassal is permitted to go to another higher authority and seek counsel. And if the lord refuses to do justice to him, he can forcibly dispossess him.

## [LF 2.23]
## On what grounds a fief is to be lost

Obertus de Orto greets his son Anselm. By writing often about this matter, you compel and greatly urge me to explain to you, one by one, the grounds on which a benefice is to be lost. I delayed doing this because, being very frequently busy taking care of our commonwealth and detained by many disputes among private persons and by other impediments of innumerable matters, I have been unable to undertake that task. Lest I seem to attach little importance to your requests and neglect the eagerness to learn that impels you, I am going to explain in a few words what seems useful to me concerning this matter, as long as you keep in mind that those grounds cannot be subsumed under any precise rule or simple definition.

In fact, what we find written in the Digest concerning proof (Dig. 22.5.3.2), we can also say, without objection, concerning these grounds, for if one said that it is not possible to define in any precise way what grounds could suffice for a lord to prove a vassal's ingratitude, one would not be wrong.

However, I speak of that ingratitude for which a benefice is to be lost, because not every occasion on which a vassal would seem ungrateful in respect of the benefice he has received is sufficient for this. But there are some, so to speak, outstanding grounds of ingratitude on which a benefice is usually taken away, according to the practices of [different] courts. For how humbly,

[1] *V2* If he delays doing this.

lus, quam humiliter, quam devote, quam benigne, quam fideliter erga dominum suum debeat se habere, potius ex naturali[1] et bonis curiarum consuetudinibus potest percipi, quam aliqua lege[2] aut scripto aliquo possit comprehendi.

[*V2* 2.23.1] Imprimis illud te scire oportet, beneficii illius, quod est genus, talem esse definitionem: beneficium nihil aliud est, quam benevola actio, tribuens gaudium capientibus capiensque tribuendo in id, quod facit prona et sponte sua parata.[3] Huius autem generis species quaedam est beneficium illud, quod ex benevolentia alicuius ita datur,[4] ut proprietate quidem rei immobilis beneficiatae penes dantem remanente ususfructus[5] illius rei ita ad accipientem transeat, ut ad eum heredesque suos masculos sive feminas, si de his nominatim dictum sit, in perpetuum pertineat, ob hoc,[6] ut ille et sui heredes fideliter domino serviant, sive servitium illud nominatim, quale esse debeat, sit expressum sive indeterminate sit promissum.

## [LF 2.24]
## Quae fuerit prima causa beneficii amittendi

[pr.] Prima autem causa beneficii amittendi haec fuit et adhuc in plerisque curiis est, sed in nostra Mediolanensium[7] non obtinet, quod si vasallus per annum et diem domino suo mortuo steterit, quod heredem domini sui investituram petendo, fidelitatem pollicendo non adierit, tanquam ingratus existens beneficium amittit, et e converso si domino superstite vasallus decesserit et filius eius per iam dictum tempus neglexerit, petere investituram, beneficio se cariturum agnoscat.[8]

[§ 1] Est et alia ingratitudo notanda, si dominus investituram pollicendo vasalli fidelitatem petierit et illo non praestante dominus tribus vicibus conveniente tempore, forte septem dierum spatio interposito,[9] ad curiam suam super hoc proclamaverit[10] et vasallus tribus vicibus a suis paribus citatus iurare noluerit, si tamen beneficium tale sit, unde[11] iusiurandum fidelitatis fieri debeat. Sunt enim quaedam feuda ita data, ut pro his fidelitas non sit praestanda.

[§ 2] Item qui dominum suum, cum quo ad praelium iverit, in acie periclitantem dimiserit, beneficio indignum se iudicavit.

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[1] *V2* ex naturali ratione; *Ant.* ex naturali ingenio. [2] *V2* quam lege. [3] *V2 adds* ut ait Seneca. *Quot. from* Sen., *De beneficiis*, 1.6. [4] *V2* quod ex benevolentia ita datur alicui. [5] *V2* ut proprietas quidem rei immobilis beneficiatae penes dantem remaneat, ususfructus vero. [6] *V2* ad hoc. [7] *V2* Mediolanensi. [8] *V2* beneficio carebit *for* beneficium se cariturum agnoscat. [9] *V2* conveniente tempore interposito, forte septem dierum spatio. [10] *V2* reclamaverit. [11] *V2* ut pro eo.

devotedly, benevolently, and faithfully a vassal ought to behave towards his lord is a matter that can be better perceived from natural reason[1] and the good customs of the courts than it can be expressed in any law or writing.

[*V2* 2.23.1] In the first place, you need to know that the definition of 'benefice', as a general category, is as follows: a benefice is nothing but a benevolent act which gives joy to them who receive it and receives it from giving, and which in doing so is well-inclined and voluntarily prepared.[2] Moreover, a specific type of this general category is that benefice which is given out of someone's benevolence[3] so that, whilst the ownership of the immoveable property that is given in benefice remains with the giver, the usufruct[4] of that property is transferred to the receiver in such a way that it should belong perpetually to him and his male heirs, or female if express mention is made of them. [And it is given] so that he and his heirs serve the lord faithfully, regardless of whether that service is expressed precisely as to what it ought to be or is promised indeterminately.

## [LF 2.24]
## What is the first ground for losing a benefice

[pr.] However, the first ground for losing a benefice was, and in many courts still is—but it does not hold in ours in Milan—this one: if a vassal remains for a year and a day after his lord has died without going to the lord's heir to seek investiture and promise fealty, he loses the benefice as he shows himself to be ungrateful. And, conversely, if a vassal dies with the lord surviving, and his son neglects to seek investiture for the aforesaid period, he should know that he shall be deprived of the benefice.

[§1] There is another ingratitude which should be noted; if a lord, by promising investiture, seeks a vassal's [oath of] fealty and, with the latter not taking it, the lord announces this to his court on three occasions at the appropriate time, perhaps at intervals of seven days, and the vassal refuses to swear after being summoned three times by his peers. However, [this is so] only if the benefice is such that an oath of fealty ought to be made for it, for some fiefs are given in such a way that [the oath of] fealty should not be taken in return for them.

[§2] Also, he who abandons his lord, with whom he has gone to battle, while he is still in danger on the battlefield, proclaims himself unworthy of the benefice.

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[1] *The translation follows V2 and Ant. since V1 seems incomplete.* [2] *V2 adds* as Seneca said. [3] *V2* which is given to someone out of one's benevolence. [4] *V2* so that the ownership of the immoveable property that is given in benefice remains with the giver, and the usufruct.

[§ 3] Praeterea si vasallus praescierit quemlibet[1] contra dominum suum assaltum mortem, captionem aut grandem patrimonii iacturam molientem, debet dominum super hoc, quam citius potest, certiorare, ut proinde dominus sciens prudensque periculum valeat declinare. Quod si forte fidelis qui esse debuerit, dolosus vel negligens super hoc inventus fuerit, se beneficio carriturum agnoscat.[2]

[§ 4] Rursus si domini vel dominae filiae vel nurui aut sorori in domo adhuc manenti, quae in capillo dicitur, sese immiscuerit, feudo, quo se monstravit indignum, carere debet.

[§ 5] Porro si dominum, ut ita loquar,[3] assalierit vel vicum, in quo est, per vim aggressus fuerit vel impias manus in personam domini ubicunque iniecerit[4] vel alias graves et inhonestas iniurias intulerit vel morti eius veneno vel gladio vel aliter insidiatus fuerit, beneficium amittat.

[§ 6] Item qui domino suo iustitiam facere noluerit, feudum perdit.[5] [*V2* 2.24.6] Sed non est alia iustior causa beneficii auferendi, quam si id, pro quo[6] beneficium datum fuerit, hoc[7] servitium facere recusaverit, quia beneficium amittit.[8] Aliud est, si forte ideo non servierit, quia non potuerit; tunc enim feudum non amittit.

[§ 7] Sed et qui[9] delator domini sui exstiterit et per suam delationem grave dispendium eum sustinere fecerit, vel si cognoverit, dominum inclusum et eum, cum potuerit, non liberaverit, indignationem domini non evitabit.[10]

[§ 8] Praedictis modis beneficium debere amitti tam naturalis quam civilis ratio suadet,[11] quod[12] potest colligi, si quis novam constitutionem,[13] iustas exheredationis causas enumerantem et alias constitutiones veteres[14] iustas ingratitudinis et repudii causas, quibus matrimonia recte contracta solvuntur et donationes recte factae[15] revocantur, subtiliter sciscitatus fuerit. [*V2 2.24.9*] Sed quia natura novas deproperat edere formas,[16] potest multis modis contingere, ut aliae emergant causae, quibus videatur iuste adimi posse beneficium,[17] ideoque iudex sollers et discretus et aequitati obsecundare sollicitus

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[1] *V2* aliquem *for* quemlibet. [2] *V2* Quod si non fecerit, doloque vel negligentia sua celaverit, beneficio se cariturum agnoscat *for* Quod si forte ... agnoscat. [3] *V2 omits* ut ita loquar. [4] *V2* ingesserit. [5] *V2, as part of 2.24.5* Illud tamen non lateat, quod, si quis suo domino iustitiam facere noluerit, feudum, quod tenebat, perdet, sicut in alio libello tibi scripsisse hoc credo *for* Item qui ... perdit. *V2 follows Ant.*: Illud te non lateat, quod, qui suo domino iustitiam facere noluerit, feudo, quod tenebat, expoliandus erit, sicut in alio libello vel alia vice dictum fore credo. [6] *V2* id propter quod. [7] *V2 omits* hoc. [8] *V2 omits* quia beneficium amittit. [9] *V2* Item si. [10] *V2* non liberaverit, feudum perdit. [11] *Quot. from Inst. 1.10pr.* [12] *V2* quae. [13] *Nov. 115, 3–4.* [14] *C. 8.55; C. 5.17.* [15] *V2* iure perfectae *for* recte factae. [16] *See C. 1.17.2.18: 'multas etenim formas edere natura novas deproperat'.* [17] *V2* feudum *for* beneficium.

[§ 3] Furthermore, if a vassal knows in advance that someone is devising any assault, murder, kidnapping, or severe loss of patrimony against his lord, he ought to inform the lord about it as soon as he can, so that the lord, made aware and watchful, should consequently be able to avoid the peril. If perhaps he who ought to be faithful is found deceitful or negligent on this matter, he should know that he shall be deprived of the benefice.[1]

[§ 4] Again, if he has intercourse with his lord's or lady's daughter, daughter-in-law, or sister, still living in the house in the condition of unveiled maiden,[2] he ought to be deprived of the fief, of which he has proved himself unworthy.

[§ 5] Then, if he, so to speak, assaults the lord, or attacks by force the village in which he is, or anywhere lays impious hands on the lord's person, or inflicts any other serious and dishonourable offences on him, or plots his death by poison, sword, or other means, he is to lose the benefice.

[§ 6] Also, he who refuses to do justice to his lord, loses the fief.[3] However, there is no more just grounds for taking away a benefice than if [a vassal] refuses to do the service in return for which the benefice was given—because he loses the benefice.[4] It is different if, suppose, he does not render service because he is not able to, for then he does not lose the fief.

[§ 7] However, also he who reveals himself to be an informant against his lord and through his informing causes him to sustain severe harm, or if he is aware that his lord has been captured and does not free him when he could, he shall not avoid the lord's anger.[5]

[§ 8] Both natural and civil reason[6] recommend that a benefice ought to be lost in the aforesaid ways. This can be gathered if one thoroughly searches the new constitution enumerating the just grounds for disinheritance (Nov. 115.3–4) and the other old constitutions concerning the just grounds for charging someone with ingratitude, and for repudiation, on which rightly contracted marriages are dissolved and rightly performed donations are revoked (C. 8.55; C. 5.17). [*V2 2.24.9*] However, since nature hastens to bring forth new forms, it can happen in many ways that other grounds arise on which it would seem that a benefice can be justly taken away. Therefore, a judge who is diligent, cautious,

[1] *V2* If he does not do so, and conceals it deliberately or by neglect, he should know that he shall be deprived of the benefice. [2] *'In capillo': an unmarried woman who has her head uncovered.* [3] *V2* However, it should not remain untold that if someone refuses to do justice to his lord, he shall lose the fief which he held, just as I believe I wrote to you in another little book. *See LF 2.22pr.* [4] *The aside 'because he loses the benefice', also reported in V3, does not appear in Ant. and V2. It seems to be a redundant interpolation which stresses the penance for the vassal's fault.* [5] *V2* and does not free him when he could, he loses the fief. [6] *The distinction follows that between natural law and civil law. The sentence is derived from Inst. 1.10pr.*

cuncta subtiliter dispensans provideat, si qua fuerit antiquioribus causis similis seu maior, ut proinde sciat, utrum beneficium sit amittendum an nihilominus retinendum. [*V2 2.24.10*] Illud enim est certum, quod non ex omni causa, ex qua opinio vasalli gravatur, beneficium amittitur. Nam et saepe deierat et beneficium nihilominus retinet; utputa qui beneficii portionem absque domini scientia alienat, beneficium quidem retinet, sed fidem promissam servare non videtur.

[§ 9] [*V2* 2.24.11] Denique saepe quaesitum est, vasallo propter iustam causam[1] a feudo cadente utrum ad dominum an ad successorem vasalli beneficium pertineat. Sed talis[2] distinctio tam ratione quam moribus comprobata est, ut, si quidem vasallus ita in dominum peccaverit, ut feudum amittere debeat, non ad proximos sed ad dominum beneficium revertatur, ut hanc saltem habeat suae iniuriae ultionem. Si vero non in dominum sed alias grave quid commiserit, sicut ille qui fratrem suum interfecit, vel aliud grave crimen, quod parricidii appellatione continetur, commiserit, feudum amittit, et non ad dominum sed ad proximos pertinet, si tamen fuerit paternum. Sic enim saepe pronunciatum scio.

[§ 10] [*V2* 2.24.12] Si vasallus contra constitutionem bonae memoriae Lotharii imperatoris[3] beneficium alienaverit, quia dominum contemnere videtur ad dominum beneficium pertineat; scriptum est enim, ut pretio ac beneficio se cariturum agnoscat.

## [LF 2.25]
## Si de feudo vasallus ab aliquo interpellatus fuerit et dominus eum defendere noluerit

Negotium tale est: quidam vasallus a domino tenebat feudum, de quo ab alio[4] interpellatus fuit, et sic[5] dominum vocavit ut eum defenderet; domino renuente ad iudicem venire vasallus amisit causam per sententiam. Nunc vero vasallus cambium feudi a domino petit, ad quem dominus respondens sic[6] ait, illum nunquam ab eo feudum tenuisse nec ab eo investituram accepisse. Contra quem vasallus dicit, se hoc feudum ab eo tenuisse et investituram recepisse

[1] *V2* propter iustam culpam. [2] *V2* haec *for* talis. [3] *LF 2.52.1.* [4] *V2* ab aliquo. [5] *V2* et sic vasallus. [6] *V2 omits* sic.

and prompt in pursuing equity, by thoroughly assessing every circumstance, is to establish whether some grounds are similar to the previous ones,[1] or of greater importance, and hence know whether a benefice should be lost or nonetheless retained. [*V2 2.24.10*] For it is certain that a benefice is not lost on all grounds on which a vassal's reputation is damaged, as in many cases he breaks the oath[2] and nonetheless retains the benefice. For instance, he who alienates a portion of the fief without the knowledge of his lord does indeed retain the benefice, but he does not seem to keep the faith he promised.

[§ 9] [*V2* 2.24.11] Finally, it has been often asked, when a vassal is stripped of a fief on just grounds, whether the benefice belongs to the lord or the vassal's successor. But the following distinction has been approved by both reason and practice. If indeed the vassal commits an offence against his lord in such a way that he ought to lose the fief, the benefice is to revert not to his close relatives but to the lord, so that he has at least this retribution for his injury. However, if he commits any serious offence not against the lord but someone else,[3] as in the case of him who has killed his own brother or commits another serious crime which falls under the definition of parricide, he loses the fief and it belongs not to the lord but to his close relatives, if indeed the fief is ancestral; for I know that it has been often judged in this way.

[§ 10] [*V2* 2.24.12] If a vassal, contrary to the decree of the dearly remembered Emperor Lothair (LF 2.52.1), alienates a benefice, since he is [thereby] considered to have shown contempt to the lord, the benefice is to belong to the lord. For it has been written that he should know he shall be deprived of the payment [received for the alienation] and the benefice.

## [LF 2.25]
## If a vassal is sued by someone concerning a fief and the lord refuses to defend him

The case is as follows. A certain vassal was holding a fief from a lord, in respect to which he was sued by another; hence he called upon his lord to defend him. The lord refused to appear before the judge and the vassal lost the case through final judgment. Now, however, the vassal seeks from the lord an exchange for the fief; in response to him the lord says that he has never held a fief from him, nor has he received investiture from him. Against the lord, the vassal says that he held this fief from him and received investiture and asked him that he would

[1] *I.e., the grounds listed in the previous chapters.* [2] *Note that in classical Latin 'deiero' stands for 'to swear solemnly'; for its medieval meaning 'to forswear oneself', i.e. to commit perjury, see: Niermeyer*, 'Dejerare'. [3] *Lit.* not against the lord but otherwise.

et ab eo petivisse, ut eum in iudicio defenderet, nec tunc temporis infitiebatur[1] illius esse, quod totum idoneis testibus probat vasallus.

[V2 2.25.1] Super negotio isto,[2] quod litteris insinuastis,[3] tale est sapientium nostrae civitatis consilium, videlicet Oberti de Orto et Gerardi Cagapisti, ut, si vasallus, cum de feudo interpellabatur, auctorem suum, id est dominum, ut eum defenderet, vocavit et hoc probare possit, et[4] si in eo iudicio vasallus fuerit victus[5] de re aliena investitum fuisse, ut dominus vasallo eiusdem aestimationis, quod erat tempore rei iudicatae, feudum restituat vel nummos in feudum dandos numeret. Et hoc cum certum est, vasallum de feudo victum fore. Sed si dominus neget, hoc feudum nunquam[6] ab eo tenuisse nec ab eo domino ipsum vasallum vel eius antecessores nunquam[7] investituram accepisse, et hoc vel per instrumentum publice confectum vel per pares curtis vasallus potuerit probare, dominus ad restitutionem feudi tenebitur; alioquin dominus sacramentum subire cogetur, istum, qui in causa est, vel eius antecessores a se vel a suis antecessoribus nunquam hoc feudum tenuisse vel investituram accepisse; quo facto dominus absolvendus erit.

## [LF 2.26]
## Si de feudo controversia fuerit[8]

[pr.] Si de feudo defuncti militis contentio sit inter dominum et agnatos defuncti, domino novum feudum, agnatis vero paternum esse contendentibus, agnati in possessione feudi, de quo quaeritur, constituendi sunt. Quo[9] facto super principali quaestione cognoscendum est, utroque autem deficiente in probatione electio iurisiurandi agnatis danda est.

[1] *V2* inficiabatur. [2] *V2* Respondi: super negotio isto. [3] *V2* insinuastis nobis. [4] *V2 omits* et. [5] *V2* convictus. [6] *V2* unquam. [7] *V2* unquam. [8] *V2* Si de feudo defuncti contentio sit inter dominum et agnatos vasalli. [9] *V2* Eo.

defend him in the trial, and that, at that time, [the lord] did not deny that the fief was his—all of which the vassal proves through suitable witnesses.

[V2 2.25.1] In respect to this case, which you submitted to us by letter, such is the counsel of the experts of our city, namely Obertus de Orto and Gerardus Cagapistus. If the vassal, when he was sued in respect to the fief, called upon his warrantor, i.e. the lord, to defend him, and can prove this, and if in that trial the vassal was defeated as having been invested with someone else's property, then the lord is to restore to the vassal a fief of the same value it had at the time when the matter was adjudged.[1] Alternatively, he is to give an equivalent amount of money in fief.[2] And this [applies] when it is certain that the vassal would be defeated [in a trial] concerning the fief. However, if the lord denies that he has ever held this fief from him, and that this vassal or his ancestors had ever received investiture from him, i.e. the lord, but the vassal can prove this either through a public instrument or through the peers of the [lord's] court, the lord shall be bound to restore the fief. Otherwise, the lord shall be compelled to undertake the oath that neither that person, who is in the case, nor his ancestors, ever held this fief or received investiture from him or from his ancestors. When this has been done, the lord must be cleared.

## [LF 2.26]
## If there is a dispute over a fief[3]

[pr.] If there is a dispute over the fief of a deceased knight between the lord and the agnates of the deceased, with the lord contending it is a new fief and the agnates contending it is ancestral, the agnates must be put in possession of the fief over which the dispute arises. When this has been done, one must take cognisance of the principal question; but if both fail in their proof, the option of taking an oath must be given to the agnates.

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[1] *'Res iudicata': a matter that has been decided through a final judgment.* [2] *The nature of this payment is unclear. The text seems to imply that the sum is held as a fief. However, the 'glossa ordinaria'* (*gl. 'in feudum dandos'*) *suggests that the sum substitutes the fief; the same opinion is substantially shared by Ardizone and Iacobus de Aurelianis*: A. Stella, 'The Summa feudorum', 308–309, at lines 815–824. *Belviso strengthens this opinion, by suggesting that the lord should compensate the vassal with some immoveable goods of the same value as the lost fief, since moveable goods cannot be enfeoffed*: Iacobus de Belviso, *Apparatus*, f. 95ra. *Andreas de Isernia says, however, that the payment is to be used to buy another fief of the same value*: Andreas de Isernia, *In usus feudorum commentaria* (Francofurti: Wechel, 1629), f. 351a. [3] *V2* If there is a dispute over a fief of a deceased [knight] between the lord and the vassal's agnates.

[§1] Inter filiam defuncti et agnatos eius de quodam praedio quaestio mota est, agnatis feudum, filia vero allodium sive libellarium esse asserentibus. Super possessione, apud quem manere debeat, quaerebatur. Responsum est, apud filiam possessionem interim esse collocandam, deficientibus vero hinc inde probationibus per iusiurandum causa cognita res decidatur, electione danda agnatis.

[§2] Defuncto milite inter dominum et filiam illius super quodam fundo[1] quaerebatur, domino feudum filia allodium sive libellarium esse allegante. Filia in possessione feudi manere debet,[2] donec de eo iudicetur, probatione vero hinc inde cessante electio iurisiurandi filiae danda est.

[§3] Moribus receptum est, dominum de feudo sui militis, quod post mortem ipsius ad dominum reverti sperabatur, in alium militem investituram facere posse. Quae investitura tunc demum capiet effectum, cum feudum domino sive heredi suo fuerit apertum. Secus est in ecclesiasticis personis. Nam si ecclesiastica persona talem faciat investituram, non aliter valebit, nisi sibi, non etiam successori suo, feudum aperiatur, et in tali investitura consensus eius, de cuius feudo sit, exquiri non oportet.

[§4] Vasallus, si feudum partemve feudi aut feudi conditionem ex certa scientia inficiatus fuerit[3] et inde convictus fuerit, eo, quod negaverit, feudo eiusve conditione exspoliabitur,[4] alius autem vasallus, quamvis hoc sciens non patefaciat, feudum tamen retinet, aut si aliam rem domini celaverit vasallus, feudum tamen non amittit.

[§5] Si quis per triginta annos rem aliquam ut feudum possedit et servitium domino exhibuit, quamvis de ea re nunquam[5] sit investitus, praescriptione tamen triginta annorum se tueri potest.

[§6] Qui clericus efficitur aut votum religionis assumit, hoc ipso feudum amittit.

[§7] Etsi vasallus omni anno domino se non repraesentet,[6] feudum tamen non amittit.

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[1] *V2* feudo. [2] *V2* Respondi: filiam in possessione feudi manere debere. [3] *V2* inficiatur. [4] *V2* eo, quod negaverit, feudum eiusve conditione, exspoliabitur; *V2 reports in footnote the following variant*: eo, quod negaverit, feudi eius conditionem, exspoliabitur; *V3* eo, quod abnegavit, feudum eius vel conditionem, exspoliabitur. [5] *V2* non *for* nunquam. [6] *V2* repraesentat.

[§ 1] Between the daughter of a deceased man and his agnates a case was raised over some estate, with the agnates asserting it was a fief and the daughter asserting it was allodial or leased property. It was asked, with respect to possession, with whom it ought to remain. It was answered that possession must be assigned in the meantime to the daughter. However, in the absence thereafter of proofs concerning this, once cognisance of the case has been taken, the matter is to be decided through an oath, and this option must be given to the agnates.

[§ 2] After a knight died, a question arose between the lord and the knight's daughter over some piece of land, with the lord alleging it was a fief and the daughter alleging it was allodial or leased property. The daughter ought to remain in possession of the fief until the matter is adjudged. However, in the absence thereafter of proof concerning this, the option of taking an oath must be given to the daughter.

[§ 3] It has been accepted by practice that a lord can invest a knight with a fief of his [other] knight which was expected to revert to the lord after the latter's death. This investiture shall take effect only when the fief has become vacant for the lord or his heir. It is different for ecclesiastical persons, for if an ecclesiastical person makes such an investiture, it shall have effect only if the fief has become vacant for him, and not [if it has become vacant] for his successor. And in such an investiture it is not necessary to seek the consent of the person whose fief it is.

[§ 4] If a vassal knowingly denies a fief, or a part of a fief, or the condition of a fief, and he is then convicted of this, he shall be dispossessed of the fief or its condition on the grounds that he denies [them].[1] However, another vassal who, although knowing this, does not declare it openly,[2] nonetheless retains the fief; or, if a vassal conceals some other property of the lord, he does not, however, lose the fief.

[§ 5] If anyone has possessed some property as a fief for thirty years, and has performed service to the lord, even though he has never been invested with that property, he nonetheless can defend himself on the grounds of thirty-year prescription.[3]

[§ 6] He who is made a cleric or takes religious vows loses the fief by that very fact.

[§ 7] Even if a vassal does not present himself to the lord each year, he nonetheless does not lose the fief.

[1] *V2* he shall be dispossessed on the grounds that he denies that it is a fief or its condition; *V2'* he shall be dispossessed on the grounds that he denies the condition of his fief; *V3* he shall be dispossessed on the grounds that he has denied his fief or its condition. [2] *I.e., he declares himself uncertain.* [3] *On 'praescriptio', see Glossary.*

[§ 8] Omnes filii eius, qui feudum acquisivit[1] fidelitatem facere debent, maxime si indivisum habent. Quodsi feudum ex divisione ad unum tantum pervenerit, ille solummodo faciet fidelitatem.

[§ 9] Adoptivus filius in feudum non succedit.

[§ 10] Mulier habens feudum relictis filiis ex duobus matrimoniis decessit. Inter quos feudi quaestio aliarumque rerum maternarum vertebatur. Obtinuit, filios prioris matrimonii tam in feudo quam in ceteris potiores esse.

[§ 11] Naturales filii, licet postea fiant legitimi, ad successionem feudi nec soli nec cum aliis vocantur.[2]

[§ 12] Si minori datum fuerit feudum, fidelitatem facere non cogitur,[3] donec venerit in maiorem aetatem;[4] feudum tamen retinet.

[§ 13] Si quis decesserit impubere[5] relicto, fidelitatem nec ipse nec alius pro eo facere cogitur. Idem de servitio personali, alius tamen pro eo faciens servitium admittetur.[6]

[§ 14] Titius, filios masculos non habens, partem suam feudi Seio, partem eiusdem feudi possidenti, agnato suo, concessit. Sempronius, proximior agnatus, mortuo demum Titio partem illam feudi nullo dato pretio recuperare potest. Quodsi Titius filios haberet, pretio reddito etiam vivo Titio. Quodsi consensit alienationi vel per annum, ex quo scivit, tacuit, omnimodo removebitur.

[§ 15] Si facta de feudo investitura poeniteat dominum, antequam possessionem transferat, an praestando interesse vasallo liberetur, quaesitum fuit. Responsum est: praetermissa illa condemnatione, dominum possessionem feudi, de quo investituram fecit, tradere compellendum.

[1] *V2* acquisierit. [2] *V2* admittuntur. [3] *V2* cogatur. [4] *V2 adds* in qua doli capax sit. [5] *V2* filio impubere. [6] *V2* admittitur.

[§ 8] All the sons of him who acquired a fief ought to do fealty, especially if they have it undivided. And if the fief, after a partition, comes to only one of them, he alone shall do fealty.

[§ 9] An adopted son does not succeed to a fief.

[§ 10] A woman who had a fief died leaving sons from two marriages. A question arose between them regarding the fief and other properties of their mother. It was decided that the sons from the earlier marriage had a better claim to both the fief and the other properties.

[§ 11] Illegitimate sons, even if they are later made legitimate, are not called to succeed to a fief,[1] neither alone nor together with others.

[§ 12] If a fief is given to a minor, he is not obliged[2] to do fealty until he comes of age;[3] nonetheless, he retains the fief.

[§ 13] If anyone dies leaving a son below the age of puberty, neither the son nor another on his behalf is compelled to do fealty. The same [applies] concerning personal service; nonetheless, another who provides service on his behalf shall be admitted.

[§ 14] Titius, who had no sons, granted his portion of a fief to his agnate Seius who possessed [another] portion of the same fief.[4] [Titius's] closer agnate Sempronius, once Titius has died can recover that portion of the fief without giving any payment; but if Titius had sons, he could [recover it] by giving back its price even with Titius alive.[5] And if he consented to the alienation or has remained silent for a year after he knew of it, he shall be in every way excluded.

[§ 15] If a lord, after making investiture of a fief, regrets [doing so] before he transfers possession, it has been asked whether he would be released by providing compensation to the vassal. It was answered: leaving aside that [possible] conviction, the lord must be compelled to transfer possession of the fief of which he made investiture.

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[1] *V2* are not admitted to succession to a fief. [2] *V2* he should not be obliged. [3] *V2* in which he would be capable of deceit. [4] *Whilst this translation* (*see also* Spruit-Chorus, 68) *seems to reflect the Latin text, one cannot ignore the fact that some great exegetes of the* LF *interpreted this chapter differently: 'Titius, who had no sons, granted his portion of a fief to Seius, and a portion to an agnate of his who possessed a part of the same fief'; or 'and a portion of the same fief to an agnate of his who possessed it'. See*: Iacobus de Belviso, *Apparatus*, f. 95[vb]; Andreas de Isernia, *In usus feudorum*, 378–384. *These authors imply that Seius is not a relative of Titius, and that he acquired the fief with money. This interpretation, however, seems not to reflect what the term 'concessit' mean; moreover, the second part of the chapter does not distinguish between two grantees or purchasers, but only refer to a 'partem illam feudi', like only one transaction had taken place in this hypothetical case.* [5] *The text is not clear as to whether Titius had received some payment for the grant, or this payment is a compensation for the grantee's loss.*

[§16] Filii nati ex ea uxore, cum qua matrimonium tali conditione contractum est, ne filii ex ea nati patri ab intestato succedant, et in feudum non[1] succedunt. Nam, quamvis ratione improbetur talis conditio, ex usu admittitur.[2]

[§17] Licet vasallus domino servitium non offerat, quantocunque tempore steterit, dummodo domino petenti servire paratus sit, beneficium non amittit; si tamen sciat, ei magnum periculum imminere, ultro adiutorium suum ei debet praebere. Inde quaesitum est, si dominus in periurium incidat, quia dare non valeat, quod dare iuraverat, et vasallus eum liberare possit suam pecuniam dando et non faciat, an beneficium amittat. Et responsum est, non amittere.

[§18] Si vasallus culpam committat, propter quam feudum amittere debeat, neque filius neque eius descendentes ad id feudum vocabuntur, sed agnati, qui quarto gradu sunt, dummodo ad eos pertineat.

[§19] In generali alienatione vasalli non continetur feudum, nisi nominatim dictum sit.

[§20] Si vasallus feudum alienaverit ignorans, non domino sed ipsi vasallo feudum restituendum est. Ad interesse vero emptori ignoranti condemnandus est vasallus.

[§21] Vasallus feudum, quod sciens abnegavit, amittat,[3] ignoranti vero subvenitur. Quodsi dubitat,[4] dubitanter respondere debet.

[§22] Beneficium a vasallo in feudum, si nihil in fraudem legis fiat, recte dari potest, dum tamen militi detur.

[§23] Si vasallus de feudo[5] suo agat vel conveniatur, sive obtineat sive non, licet ignorante domino fiat, omni tempore firmum erit illud iudicium. Nam et transigere recte poterit nec, quod accepit transactionis nomine, feudum erit.

[§24] Domino committente feloniam, ut ita dicam, per quam vasallus amitteret feudum, si eam committeret, responsum est, proprietatem feudi[6] ad vasallum pertinere, sive peccaverit in vasallum sive in alium.

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[1] *V2* nec in feudum. [2] *V2* ex usu tamen admittitur. [3] *V2* amittit. [4] *V2* dubitet. [5] *V2* de beneficio. [6] *V2, V3*: Domino committente feloniam, ut ita dicam, per quam vasallus amitteret feudum si eam committeret, quid obtinere debeat de consuetudine quaeritur. Et respondetur proprietatem feudi.

[§ 16] Sons born of a wife with whom marriage was contracted on such a condition that sons born of her should not succeed the father on intestacy,[1] do not succeed to the fief either. For although such a condition should be rejected by reason, it is admitted on the basis of usage.

[§ 17] Even if a vassal does not offer service to the lord, however long he remains [without offering service], he does not lose the benefice, as long as he is prepared to serve the lord when he requests. Nonetheless, if he knows that great peril threatens the lord, he ought to provide him with his assistance of his own accord. It has been asked regarding this: if the lord incurs perjury because he is not able to give what he had sworn to give, and the vassal could clear him by giving his own money and does not do so, is he to lose the benefice? And it has been answered that he is not to lose it.

[§ 18] If a vassal commits a fault because of which he ought to lose the fief, neither his son nor his descendants shall be called [to succeed] to that fief, but the agnates to the fourth degree shall be, provided that it is to belong to them.

[§ 19] In a general alienation made by a vassal, his fief is not included unless it has been expressly mentioned.

[§ 20] If a vassal alienates a fief not knowing [that it is a fief], the fief must be restored not to the lord but to that vassal. The vassal, however, must be condemned to pay compensation to the unwitting purchaser.

[§ 21] A vassal is to lose the fief which he wittingly denied [being a fief], but assistance is offered to him who did so unwittingly. And if he is in doubt, he ought to respond with doubt.

[§ 22] A benefice can be rightly given in fief by a vassal if nothing is done to circumvent the law, provided that it is given to a knight.

[§ 23] If a vassal brings, or is the defendant in, a case concerning his fief, regardless of whether he wins or not, that judgment shall hold for all time even if it is made with the lord unaware. Indeed, he can also rightly come to a settlement, and what he has received on account of the settlement shall not be a fief.

[§ 24] When a lord commits a felony, so to speak, for which a vassal would lose a fief if he were to commit it, it has been answered that the ownership of the fief belongs to the vassal[2], regardless of whether [the lord] committed the offence against the vassal or against another.

[1] *I.e., through succession without will.* [2] *V2* When a lord commits a felony, so to speak, for which a vassal would lose a fief if he were to commit it, it is asked what ought to hold by custom. And it is answered that the ownership of the fief belongs to the vassal.

[§ 25] Feudum ea lege datum 'ut ipse heredesque sui, masculi et feminae, et cui dederit habeant', iisdem culpis amittitur, quibus et aliud feudum. Quodsi vasallus alienavit, feudum esse desinit apud emptorem.

[§ 26] Titius cum Sempronio fratre suo, feudum paternum possidente, pactum fecit de eo feudo non petendo a Sempronio heredibusve suis. Sempronio sine filio[1] masculo defuncto inter Titium et Seium fratrem suum de eo feudo quaestio orta est,[2] et responsum est, pactum non obstare Titio.

## [LF 2.27]
## De pace tenenda et eius violatoribus[3]

Fredericus, Dei gratia Romanorum imperator, semper augustus episcopis, ducibus, comitibus, marchionibus et omnibus, ad quos literae istae pervenerint, gratiam suam et pacem et dilectionem.

[pr.] Quoniam divina praeordinante clementia solium regiae maiestatis conscendimus, dignum est, ut, cuius praecellimus munere, illi omnino pareamus in opere. Inde est, quod nos tam divinas quam humanas leges in suo vigore manere cupientes et ecclesias sive ecclesiasticas personas sublimare[4] et ab incursu et invasione quorumlibet defensare intendentes, quibuscunque personis ius suum conservare volumus et pacem diu desideratam et antea toti terrae necessariam per universas regni partes habendam regia auctoritate indicimus. Qualiter autem eadem pax sit tenenda et servanda, in subsequentibus evidenter declarabitur.

[§ 1] Si quis hominem infra pacem constitutam occiderit, capitalem subeat sententiam, nisi per duellum hoc probare possit, quod vitam suam defendendo illum occiderit. Si autem omnibus manifestum fuerit,[5] quod non necessario sed voluntarie illum occiderit, tunc neque per duellum neque quolibet alio modo se excusabit,[6] quin capitali damnetur sententia.

[§ 2][7] Si vero violator pacis a facie iudicis fugerit, res eius mobiles a iudice in populo[8] publicentur et dispensentur, heredes autem sui hereditatem, quam ipse tenebat, recipiant, tali conditione interposita, ut iureiurando spondeant, quod ille violator pacis nunquam de cetero ipsorum voluntate aut consensu aliquod emolumentum inde percipiat. Quodsi heredes neglecto postmodum iuris

[1] *V2* sine herede. [2] *V2 adds* Quid inde fieri debeat queritur. [3] *MGH, Constitutiones*, i, 194–198 (n. 140); *MGH, Frederici I. Diplomata*, i (1152–1158), 39–44 (n. 25): 1152 July/August, Ulm. [4] *V2* sublevare. [5] *V2* sit. [6] *V2* excusabitur *for* se excusabit. [7] *V2 has this § as the second part of 2.27.1.* [8] *V2* in populum.

[§ 25] A fief that is given on this provision that 'he himself, and his heirs, male and female, and they to whom he will give it, are to have it', is lost for the same faults as any other fief. And if a vassal has alienated it, it ceases to be a fief in the hands of the purchaser.

[§ 26] Titius made an agreement with his brother Sempronius, who possessed an ancestral fief, that he would not claim that fief from Sempronius or his heirs. When Sempronius died without a son, a question arose between Titius and his other brother Seius over that fief.[1] And it has been answered that the agreement does not obstruct Titius.

### [LF 2.27]
### On keeping the peace and its violators

Frederick, by the grace of God the ever august emperor of the Romans, [sends] to the bishops, dukes, counts, marquesses, and all whom these decrees reach, his favour, peace, and affection.

[pr.] Since we ascend the throne of royal majesty by the preordaining divine mercy, it is fitting that we obey altogether in our actions Him by whose gift we are placed in power. Therefore, desiring that both divine and human laws remain in their force, and endeavouring to glorify[2] churches and ecclesiastical persons and defend them from anyone's assault and invasion, we wish to guarantee to every person their right and proclaim, by royal authority, a long-desired peace, of which the entire land has hitherto been in need, to be held in all parts of the realm. In what manner, moreover, this peace must be kept and preserved will be clearly declared in what follows.

[§ 1] If anyone kills a man under the established peace, he is to undergo the death sentence, unless he can prove through a duel that he has killed him in defending his own life. If, however, it is manifest to everyone that he has killed him not out of necessity but at his own will, then he shall not clear himself either through a duel or in any other way, but he is to be condemned with a death sentence.

[§ 2][3] If, however, a violator of the peace escapes from the presence of the judge, his moveables are to be confiscated and sold by the judge. His heirs, however, are to receive the inheritance he held, with the following condition being imposed, that they are to promise by oath that this violator of the peace will never henceforth, by their will or consent, receive any profit from it. And if the heirs, having later neglected the rigour of law, grant him the inheritance, the

[1] *V2 adds* Therefore, it is asked what ought to be done. [2] *V2* endeavouring to assist. [3] *V2 has this § as the second part of 2.27.1.*

rigore hereditatem ei dimiserint, comes eandem hereditatem regiae ditioni assignet, et a rege iure beneficii recipiant.[1]

[§ 3] [*V2* 2.27.2] Si quis alium infra pacis edictum vulneraverit, nisi in duello, quod vitam suam defendendo hoc fecerit, probaverit, manus ei amputetur et, sicut superius dictum est, iudicetur et iudex in causa ipsum et res eius secundum rigorem iustitiae strictius consequatur.

[§ 4] [*V2* 2.27.3] Si quis aliquem ceperit et absque sanguinis effusione fustibus percusserit vel crines eius aut barbam expilaverit, decem libras ei, cui iniuria illata esse videtur, per compositionem impendat et iudici viginti libras persolvat. [*V2* 2.27.4] Si vero temerarius absque percussione eum invadat, quod[2] vulgo dicitur cisteros[3] et calida manu, ac verberibus contumeliisque male tractaverit, quinque libras pro tali excessu componat et iudici pro tali excessu decem libras persolvat.

[§ 5][4] Quicunque iudici suo pro excessu viginti libras invadiaverit, praedium suum pro pignore illi tradat et infra quatuor septimanas invadiatam pecuniam persolvat. Quodsi infra quatuor septimanas praedium suum solvere neglexerit, heredes sui, si voluerint, hereditatem recipiant et comiti infra sex septimanas viginti libras persolvant. Si autem comes eandem hereditatem regiae potestati consignet, proclamatori etiam damnum restituat et praedium a rege beneficiali iure obtineat.

[§ 6] [*V2* 2.27.5] Si clericus de pace violata pulsatus fuerit, id est notatus aut proscriptus fuerit,[5] aut pacis violatorem in contubernio suo habuerit, et de his in praesentia sui episcopi sufficiente testimonio convictus fuerit, comiti, in cuius comitatu idem clericus hoc perpetraverit, viginti libras persolvat et de tanto excessu secundum statuta canonum episcopo satisfaciat. Si autem idem clericus inobediens exstiterit, non solum officio et beneficio ecclesiastico privetur, verum etiam tanquam proscriptus habeatur.

[§ 7] [*V2* 2.27.6] Si iudex clamore populi aliquem pacis violatorem ad castrum alicuius domini secutus fuerit, dominus, cuius castrum id esse cognoscitur, ad faciendam iustitiam illum producat. Qui[6] si de sua fuerit diffisus

[1] *V2* a regio iure beneficium suscipiant. [2] *V2* eo quod. [3] *MGH* asteros; *DuCange, s.v. 'cisteros': 'Theut. Citterhand, calida manu'. See also*: Wolfgang Haubrichs, 'Quod Alamanni Dicunt. Volkssprachliche Wörter in der Lex Alamannorum', in *Recht und Kultur im frühmittelalterlichen Alemannien: Rechtsgeschichte, Archäologie und Geschichte des 7. und 8. Jahrhunderts*, ed. Sebastian Brather (Berlin: De Gruyter, 2017), 169–209, at 185. [4] *V2 has this § as the second part of 2.27.4*. [5] *V2 omits* id est notatus aut proscriptus fuerit. [6] *V2* Quid.

count is to assign the same inheritance to the royal authority, and they should receive it from the king by right of benefice.[1]

[§ 3] [*V2* 2.27.2] If anyone wounds another under the proclamation of peace, if he does not prove in a duel that he did this in defending his life, his hand is to be cut off, and he is to be judged as has been said above; and in the trial, the judge is to prosecute him and his properties very strictly, in accordance with the rigour of justice.

[§ 4] [*V2* 2.27.3] If someone seizes another and beats him with a club without bloodshed, or tears off his hair or beard, he is to pay ten pounds as compensation to him on whom injury appears to have been inflicted and pay twenty pounds to the judge. [*V2* 2.27.4] But if a reckless one attacks him not with a blunt instrument but, as it is commonly said, with a threatening and hasty hand, and mistreats him with blows and insults, for this transgression he is to give five pounds as compensation and pay the judge ten pounds for the same transgression.

[§ 5][2] Anybody who gives as gage twenty pounds to a judge for his transgression is to hand over to him his estate as a pledge and pay within four weeks the money that he gaged. And if he fails to release his estate within four weeks, his heirs, if they wish, may receive the inheritance but pay twenty pounds to the count within six weeks. If, however, the count assigns that inheritance to the royal power, he is to restore the damage to the plaintiff and obtain the estate from the king by right of benefice.

[§ 6] [*V2* 2.27.5] If a cleric is accused of having violated the peace—i.e. he is publicly censored or outlawed—or harbours in his home a violator of the peace, and he is proved guilty of these [faults] in the presence of his bishop on sufficient testimony, the same cleric is to pay twenty pounds to the count in whose county he committed this, and make satisfaction for such transgression to the bishop, in accordance with the provisions of the canons. If, however, the same cleric remains disobedient, not only is he to be deprived of his office and clerical benefice, but he is also to be held as an outlaw.

[§ 7] [*V2* 2.27.6] If a judge, on account of the outcry of the people,[3] has pursued some violator of the peace up to the castle of some lord, the lord to whom the castle is known to belong is to hand him over so that justice be done. Should

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[1] *V2* they will receive it as a benefice under royal law. [2] *V2 has this § as the second part of 2.27.4.*
[3] *This procedure is similar to the common law 'hue and cry' and was put in place to prevent criminals from escaping justice by fleeing from town to town. An officer was hence allowed to move out of his jurisdiction to pursue the felon.*

innocentia et ante conspectum iudicis venire formidaverit, si mansionem in castro habet, dominus eius omnia bona mobilia sub sacramento iudici repraesentet et eum de cetero in domo sua tanquam proscriptum non recipiat. Si vero mansionem in castro non habuerit, dominus eius secure eum adducere faciat et postmodum iudex cum populo eum tanquam pacis violatorem persequi non desistat.

[§ 8] [*V2* 2.27.7] Si duo homines pro uno beneficio contendunt, et unus super eodem beneficio investitorem producit, illius testimonium, cum investitor donum investiturae recognoscit, comes primo recipiat; et si idem probare poterit idoneis testibus, quod absque rapina hoc idem beneficium habuit, remota controversiae materia illud[1] obtineat. Quodsi de rapina praesente iudice convictus fuerit, rapinam dupliciter solvat, beneficio vero careat, nisi iustitia et iudicio dictante illud in posterum requirat.

[§ 9] [*V2* 2.27.8] Si tres vel plures contendunt de eodem beneficio producentes utrinque diversos investitores, iudex, in cuius praesentia causa ventilatur, a duobus requirat boni testimonii hominibus, in provincia eorundem litigatorum commorantibus, per sacramentum, quod iuraverint, quis illorum absque rapina eius beneficii possessor exstiterit, et cognita ex ipsorum testimonio rei veritate possessor beneficium suum quiete obtineat, nisi iudicio et iustitia dictante alter de manu sua illud eripiat.

[§ 10] [*V2* 2.27.9] Si rusticus militem de violata pace pulsans manu sua iuraverit, quod non voluntarie sed necessitate hoc faciat,[2] manu militari se miles expurgabit. [*V2* 2.27.10] Si miles rusticum de violata pace pulsaverit et manu sua iuraverit, quod non voluntate sed necessitate hoc fecit, de duobus unum rusticus eligat, an divino an humano iudicio innocentiam suam ostendat, aut septem testibus idoneis, quos iudex elegerit, se expurget.[3] Si miles adversus militem pro pace violata aut aliqua capitali causa duellum committere voluerit, facultas pugnandi ei non concedatur, nisi probare possit, quod antiquitus ipse cum parentibus suis natione legitimus miles existat.

[1] *V2* id. [2] *V2* quod non de voluntate sua, sed de necessitate hoc fecit. [3] *V2* purget.

[the violator] distrust his own innocence and be afraid of appearing in the presence of the judge, if he has his residence in the castle, its lord, under oath, is to surrender all [the violator's] moveables to the judge and henceforth not allow him to his own house as an outlaw. If, however, he has no residence in the castle, its lord is to have him brought safely to court and then the judge, together with the people, should not desist from prosecuting him as a violator of the peace.

[§ 8] [*V2* 2.27.7] If two men contend for one benefice, and one produces the grantor with regards to the same benefice, the count, if the grantor acknowledges the bestowal of investiture, is to receive the testimony of this one first. And if this one can prove through suitable witnesses that he has had this benefice without invasion, as the matter of dispute is removed, he is to obtain it. And if, in the presence of a judge, he is proved guilty of invasion he is to pay twice as much as the damage of that invasion and lose the benefice—unless, if justice and judgment so determine, he may seek it in the future.

[§ 9] [*V2* 2.27.8] If three or more [persons] are contending over the same benefice and each of them produces a different grantor, the judge in whose presence the case is discussed is to require from two men of good reputation, residing in the same province as these litigants, that they swear through an oath as to which of them is in possession of that benefice without invasion. Once the truth of the matter is known from their testimony, the possessor is to obtain his benefice undisturbed—unless, if justice and judgment so determine, one of the others may wrest it from his hands.

[§ 10] [*V2* 2.27.9] If a peasant accuses a knight of having violated the peace and swears alone[1] that he does not do so deliberately but out of necessity, the knight shall clear himself through a knight's oath.[2] [*V2* 2.27.10] If a knight accuses a peasant of having violated the peace and he swears alone[3] that he has not done so deliberately but out of necessity, the peasant is to choose one of these two options. He is to either prove his innocence through divine or human judgment or clear himself through seven suitable witnesses whom the judge will choose. If a knight wants to challenge another knight to a duel for having violated the peace or another capital matter, he is not to be granted the opportunity of fighting [the duel] unless he can prove that he and his relatives have long been rightful knights by birth.

[1] sua manu: *with his hand alone, without oath-helpers: Niermeyer,* s.v. 'manus'. [2] *MGH* manu quarta *for* manu militari, *with reference to an oath sworn by the oath-taker with three oath-helpers*.
[3] sua manu: *supra, footnote 1 in this page*.

[§ 11] [V2 2.27.10bis] Post natale[1] sanctae Mariae unusquisque comes septem boni testimonii viros sibi eligat et de qualibet provincia cum his habendis[2] sagaciter disponat, et quanto pretio secundum qualitatem temporis annona sit vendenda, utiliter provideat. Quicunque vero contra deliberationem ipsius infra anni terminum altius modium et carius vendere praesumpserit, tanquam violator pacis habeatur et totidem viginti libras comiti persolvat,[3] quanti modios sive maldios altius vendidisse convictus fuerit.

[§ 12] [*V2* 2.27.11] Si quis rusticus arma vel lanceam portaverit vel gladium, iudex, in cuius potestate repertus fuerit, vel arma tollat vel viginti solidos pro ipsis a rustico recipiat.

[§ 13] [*V2* 2.27.12] Mercator negotiandi causa per provinciam transiens gladium suum suae sellae alliget vel super vehiculum suum ponat, non ut quem laedat innocentem, sed ut a praedone se defendat.

[§ 14] [*V2* 2.27.13] Nemo retia sua[4] seu laqueos aut alia quaelibet instrumenta ad capiendas venationes tendat, nisi ad ursos, apros vel lupos capiendos.

[§ 15] [*V2* 2.27.14] Ad palatium comitis nullus miles arma ducat,[5] nisi rogatus a comite.

[§ 16] [*V2* 2.27.15] Publici latrones et convicti antiqua damnentur sententia.

[§ 17] [*V2* 2.27.16] Quicunque advocatiam suam vel aliquod aliud beneficium enormiter[6] tractaverit et a domino suo admonitus non resipuerit, et in sua perseverans[7] insollertia[8] ordine iudiciario tam advocatia quam beneficio exutus fuerit, si postmodum ausu temerario advocatiam vel beneficium invaserit, pro violatore pacis habeatur.

[§ 18] [*V2* 2.27.17] Si quis quinque solidos valens[9] vel amplius furatus fuerit, laqueo suspendatur; si minus, scopis et forcipe excorietur et tundatur.

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[1] *V2* Natalem. [2] *V2* ipsis *for* his habendis. [3] *V2* exsolvat. [4] *V2* *omits* sua. [5] *V2* nullus miles ferat arma. [6] *V2* inordinate *for* enormiter. [7] *V2* perdurans. [8] *V2* insolentia. [9] *V2* quinque solidos, aut valentiam.

[§ 11] [V2 2.27.10bis] After the day of St Mary's nativity ⟨8 September⟩, each count is to choose seven men of good reputation, and wisely make arrangements with them for each province, and advantageously decide for what price grain must be sold according to the conditions of the season. And anybody who, contrary to his deliberation, within the term of one year presumes to sell a bushel of grain at a higher and dearer price, is to be deemed a violator of the peace and pay the count twenty pounds for each bushel which he is proved to have sold at a higher price.

[§ 12] [*V2* 2.27.11] If some peasant carries weapons—a spear or a sword—, the judge under whose authority he is found is to either seize the weapons or receive from the peasant twenty 'solidi' for them.

[§ 13] [*V2* 2.27.12] A merchant who travels through a province to carry out trading is to tie his sword to his saddle or place it on his cart, not to harm the innocent but to defend himself from robbers.

[§ 14] [*V2* 2.27.13] No one is to set his nets, snares, or any other game-catching instruments unless for catching bears, wild boars, or wolves.

[§ 15] [*V2* 2.27.14] No knight is to carry weapons to the comital palace unless he is asked by the count.

[§ 16] [*V2* 2.27.15] Public robbers, who are found guilty, are to be condemned according to old sentence.[1]

[§ 17] [*V2* 2.27.16] Anyone who manages his office of advocate or any other benefice disregarding the rules and, admonished by his lord, does not mend his ways and, persevering in his insolence, is stripped of both office and benefice by due process, if afterwards, with reckless daring, he usurps the office or benefice, he is to be deemed a violator of the peace.

[§ 18] [*V2* 2.27.17] If anyone steals anything worth five 'solidi' or more, he is to be hanged by a noose; if less, he is to be beaten and shaved with twigs and shears.[2]

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[1] *Foramiti* (*col. 1723–1724*) *sees here a reference to Dig. 48.6.11 and Dig. 48.19.28.10, and consequently interprets this 'ancient sentence' as a 'capital sentence'; Spruit-Chorus, 64, perhaps more convincingly, suggests a reference to a customary rule that is not expressed in the text.* [2] *MGH* tondeatur (*'be shaved'*). *This solution is the most convincing, as it reflects the correlation between the couplet of names 'scopis et forcipe'* (*'twigs and shears'*) *and the verbs 'excorietur'* (*'to be beaten until the skin is bruised'*) *and 'tundatur' or 'tondeatur'* (*'be beaten' or 'be shaved'*).

[§ 19] [*V2* 2.27.18] Si ministeriales alicuius domini inter se guerram habuerint, comes sive iudex, in cuius regimine eam fecerint, leges et iudicia exinde[1] prosequatur.

[§ 20] [*V2 2.27.19*] Quicunque per terram transiens equum suum pabulare voluerit, quantum propinquius secundum viam stans in loco amplecti potuerit ad refectionem et respirationem[2] equi sui, impune ipsi equo porrigat. Licitum sit etiam, ut[3] herba et viridi silva sine vastatione et noxa quilibet[4] utatur pro sua commoditate et usu necessario.

## [LF 2.28]
## Hic finitur lex. Deinde consuetudines regni incipiunt[5]

[pr.] Domino guerram facienti alicui, si sciatur, quod iuste aut cum dubitatur, vasallus, ut eum adiuvet, tenetur.[6] Sed cum palam est, quod irrationabiliter eam facit, adiuvet eum ad eius defensionem. Ad offendendum vero eum[7] adiuvet, si vult. Sed si eum adiuvare noluerit, non tamen feudum perdet. Obertus et Gerardus.[8] Alii vero sine distinctione dicunt, semper debere eum adiuvare. Sed Obertus et Gerardus eo utuntur argumento, quod, quemadmodum dominum excommunicatum vel a rege bannitum non est obligatus vasallus ad adiuvandum vel servitium ei praestandum, immo solutus est interim sacramento fidelitatis, nisi ab ecclesia vel a rege fuerit restitutus, ita nec istum iniuste guerram alicui facientem.

[§ 1] Ad hoc quantocunque tempore steterit vasallus, quod domino non servierit, secundum usum Mediolanensium beneficium non amittit, nisi servitium facere renuerit vel nisi a domino ei denunciatum fuerit et ille, cum potuerit, diu steterit, quod servitium nullum ei fecerit. Bonus tamen iudex varie ex causis

[1] *V2* per leges et iudicia eos. [2] *V2* reparationem. [3] *V2* etiam ipsi ut. [4] *V2* qualibet. [5] *V2* Hic finitur lex. Incipiunt consuetudines regni. [6] *V2* vasallus eum adiuvare tenetur. [7] *V2* alium *for* eum. [8] *V2* non tamen feudum amittet secundum Obertum et Gerardum.

[§ 19] [*V2* 2.27.18] If the noble servants of some lord[1] wage war among themselves, the count or judge in whose jurisdiction they are doing this is to follow the laws and judicial procedures relating to that matter.[2]

[§ 20] [*V2 2.27.19*] Anyone who, while travelling by land, wishes to graze his horse, may with impunity give his horse, for its refreshment and rest, what he can reach while staying in a place reasonably close to the road. It should also be permitted that anyone may use grass and green wood for their convenience and necessary use, without waste and damage.[3]

### [LF 2.28]
### Here ends the decree. Hereafter the customs of the realm begin.

[pr] When a lord wages war on anyone, if it is known that he does so justly, or when this is uncertain, a vassal is bound to assist him. But when it is manifest that he is waging it unreasonably, the vassal is to assist him only for his defence. He may, however, assist him in offensive actions, if he wishes; nonetheless if he does not wish to assist him, he is not to lose the fief, [according to] Obertus and Gerardus. However, others say, without distinction, that he always ought to assist him. But Obertus and Gerardus use this argument, that just as a vassal is not bound to assist or render service to a lord who is excommunicated or is outlawed by the king—but rather he is temporarily released from the oath of fealty until [the lord is] reinstated by the church or the king—so this one is not [bound to a lord] who wages war against someone unjustly.

[§ 1] On the same matter, however long a vassal remains without serving the lord, by the usage of the Milanese he does not lose the benefice unless he refuses to do service or, after he has been given notice by the lord [to that end], he remains for a long time without rendering any service while he can. A good judge will nonetheless decide in various ways according to the circum-

[1] *I.e., the unfree persons raised up from serfdom by a lord.* [2] *The tradition of this passage is problematic.* MGH *agrees with V1; V2* per leges et iudicia eos prosequatur (*'is to prosecute them according to the laws and judicial procedures'*); *V3* per leges et iudicia ex ratione prosequatur (*'is to reasonably prosecute* [*them*] *through the laws and judicial procedures'*). *The different solutions offered in these editions reflect only in part the inconsistencies of the manuscripts. For instance, Salz.* (*f. 58va*): comes sive iudex in cuius regimine eam fec⟨er⟩int, leges et iudicia deinde prosequatur; *Vat1* (*f. 263ra*): comes sive iudex in cuius regimine eam fecerint leges et iudicia eos prosequatur; *Vat2* (*f. 26va*): comes sive iudex in cuius regione ea fecerint, leges et iudicia inde prosequatur; *Roma* (*f. 129va*): Si ministeriales alicuius domini inter ⟨se⟩ guerram habuerint, suum iudex in cuius regimine ea fecerint, leges et iudicia enim prosequantur; *Par.* (*f. 123va*): secundum leges et iudicia eos exinde prosequatur. [3] *V2* He shall also be permitted to use any grass and green wood for his convenience.

personisque diffiniet. Finge, vasallum remotum esse vel propinquum, paratum esse vel non, dominum guerram habere vel non utrumque magnam vel parvam, et an nunciavit ei dominus vel non—haec omnia vertuntur in cognitione causae et promptiores sumus ad absolvendum quam ad condemnandum.[1] Tamen scias, quod, si vasallus sciverit,[2] dominum obsideri vel alias ei mortem imminere et, cum potuerit etiam[3] sine nuntio eum non adiuverit, feudo privabitur.

[§ 2] Si vasallus in feudo aliquod aedificium fecerit vel ipsum sua pecunia melioraverit et contigerit postea, ut vasallus sine filio masculo decedat, dominus aut patiatur aedificium auferri aut solvat pretium meliorationis. Idem dico, si pretio servitutem fundo[4] acquirat. Quidam alii dicunt, omnino ad dominum pertinere.

[§ 3] His consequenter dicitur, quod si vasallus decedat et contingerit[5] feudum ad dominum reverti, sic distinguitur: ut[6] si ante Martium, omnes fructus eius[7] anni ex feudo provenientes ad dominum pertineant,[8] si vero post kalendas Martii usque ad Augustum, fructus,[9] qui interim percipiuntur, ad heredes vasalli pertineant, si vero post Augustum, omnes fructus anni percipiet dominus. Quidam tamen dicunt, quocunque tempore anni decedat, omnes pendentes[10] ad dominum pertinere.

[§ 4] Contra omnes debet vasallus dominum adiuvare, etiam contra fratrem et filium et patrem, nisi contra alium dominum antiquiorem; hic enim ceteris est praeferendus.

### [LF 2.29]
### De filiis natis de matrimonio ad morganaticam contracto

Quidam habens filium ex nobili coniuge, post mortem eius non valens continere aliam minus nobilem duxit. Qui nolens existere in peccato eam desponsavit ea lege, ut nec ipsa nec filii eius amplius habeant de bonis patris, quam dixerit tempore sponsaliorum, verbi gratia decem libras vel quantum voluerit dicere, quando eam sponsat,[11] quod Mediolani dicitur[12] 'accipere uxorem ad morganaticam' alibi 'lege Salica'. Hic filiis ex ea susceptis decessit. Isti in proprietate[13] non succedunt aliis exstantibus sed nec in feudo etiam aliis non

[1] *See Dig. 44.7.47*. [2] *V2* Tu tamen scias, quod, si vasallus sciat. [3] *V2* cum potuerit, ei non nunciaverit, vel etiam. [4] *V2* feudo. [5] *V2* si vasallus decedat sine herede masculo, et contingat. [6] *V2* quod *for* ut. [7] *V2* illius. [8] *V2* pertinebunt. [9] *V2* omnes fructus. [10] *V2* omnes pendentes fructus. [11] *V2* voluerit dare quando eam desponsavit. [12] *V2* quod Mediolanenses dicunt. [13] *V2* proprietatem.

stances and persons. Say, whether the vassal is far away or nearby; whether he is ready or not; whether the lord is engaged in a war or not and whether the war is great or small; and whether the lord notified him [about this] or not. All these [circumstances] are considered in the cognisance of the case, and we are more inclined to acquit than condemn. You should nonetheless know that, if a vassal knows that the lord is under siege or that he faces imminent death in some other way, and he does not help him when he can, even without being informed [by him], he shall be deprived of the fief.[1]

[§ 2] If a vassal makes any building on his fief or improves an existing one at his own expense, and it thereafter happens that the vassal dies without a son, the lord shall either allow the removal of the building or pay the price of the improvement. I say that the same [applies] if [a vassal] acquires an easement relating to a piece of land[2] with money. Some others say that [such improvements] belong wholly to the lord.

[§ 3] Following on from these matters, it is said that if a vassal dies[3] and it happens that the fief reverts to the lord, the following distinction is made. If he dies before March, all the fruits coming from the fief in that year are to belong to the lord. But if he dies after the first day of March up to August, the fruits collected in that period are to belong to the vassal's heirs. But if he dies after August, the lord shall collect all the year's fruits. However, some say that, at whatever time of the year he dies, all the ungathered produce belongs to the lord.

[§ 4] A vassal ought to assist the lord against everyone, even his own brother, son, and father, but not against another prior lord, for he must be preferred to all others.

### [LF 2.29]
### Concerning sons born of a morganatic marriage

Someone had a son from a noble wife and, not being able to restrain himself after her death, took another less noble wife. As he did not want to live in sin, he married her with a clause that she nor her sons were to have more of the father's goods than what he stated at the time of the betrothal—for example ten pounds, or however much he wishes to state[4] when he betroths her. In Milan, this is called 'taking a wife in morganatic marriage', elsewhere 'by Salic law'. He dies with sons born from her. These do not succeed to his property if there are other extant sons [from the first marriage], nor in his fief, even

[1] *V2* and, while he can, he does not inform him, or does not help him, even without being informed [by him], he shall be deprived of the fief. [2] *V2* to the fief. [3] *V2* if a vassal dies without a son. [4] *V2* how much he wishes to give.

exstantibus, quia[1] licet legitimi sint, tamen in beneficio nullatenus[2] succedunt. In proprietate vero succedunt patri prioribus non exstantibus, succedunt etiam fratribus sine legitima sobole descendentibus[3] secundum usum Mediolanensem.

## [LF 2.30]
## De beneficio feminae

Si femina habens beneficium[4] decesserit, quia femineum est feudum et sine pacto speciali, deficientibus filiis masculis ad filias pertinebit. Obertus et Gerardus. Alii vero dicunt, nisi per pactum speciale ad eas non pertinere, sicut si datum esset masculo, quia, si ideo, quod est femineum, sine pacto transit in feminas, eadem ratione, quia est femineum, transire debet in femineam prolem, etiam masculis exstantibus, quod falsum est. Ex hoc illlud descendit, quod dicitur, clericum nullo modo in beneficium paternum succedere,[5] etiamsi postea hunc habitum postposuerit. Idem in omnibus, qui habitum religionis assumunt ut conversi. Hi enim nec postea in feudo succedunt et, si quod habent, perdunt.

## [LF 2.31]
## Si vasallus feudo privetur, cui debeat deferri[6]

Vasalli feudum delinquentis licet ad agnatos quandoque pertineat, filius tamen ad id nullatenus aspirabit, nisi id iterum a domino conquirat, scilicet[7] gratiam faciente, verbi gratia si non sunt alii ex latere, quibus aperiatur. Ad cuius[8] petitionem admittuntur, qui quarto gradu sunt remoti ab eo, qui id acquisivit, et etiam usque in infinitum, dum tamen hos constet ab eo per masculos descendisse.

[1] *V2* qui. [2] *V2* minime *for* nullatenus. [3] *V2* sine legitima prole decedentibus. [4] *V2* feudum *for* beneficium. [5] *V2* debere succedere. [6] *V2* Si vasallus feudo privetur cui deferatur. [7] *V2* licite acquirat sibi *for* conquirat, scilicet. [8] *V2* eius.

without other extant sons, because although they are legitimate, however, they by no means succeed to the benefice. But they do succeed the father to his property when there are no extant prior sons; they also succeed [their] brothers dying without legitimate offspring,[1] according to the Milanese usage.

### [LF 2.30]
### Concerning the benefice of a woman

If a woman who has a benefice dies, since the fief is 'feminine',[2] in the absence of sons it shall belong to daughters and without a special agreement [to that effect], [according to] Obertus and Gerardus. However, others say that it does not belong to them unless by special agreement, just as if it had been given to a male, because if it passes to females without a special agreement for the reason that it is 'feminine', [then] by the same reasoning—that it is 'feminine'—it ought to pass to the female offspring even when males are extant, which is false. From this derives what is said of a cleric, that he in no way succeeds to an ancestral benefice even if he then renounces the religious habit. The same [is true] for all those who take the religious habit as lay brothers, for thereafter they do not succeed to a fief, and if they have one, they lose it.

### [LF 2.31]
### If a vassal is deprived of a fief, to whom it ought to be transferred

Even though the fief of a vassal who has committed an offence sometimes belongs to his agnates, however, his son shall by no means aspire to it unless he seeks it again from the lord, who, that is, pardons him[3]—for instance, if there are no other collateral relatives for whom it is to become vacant. To claim which fief, relatives are admitted who are removed in the fourth degree from him who first acquired it, and even ad infinitum, so long as it is clear that they descend from him through males.

[1] *V2 has been followed here. V1* they also succeed [their] brothers [and] descendants without legitimate offspring. [2] *I.e., it is transferable to women.* [3] *V2* if he does not acquire it again legitimately from the lord, who pardons him *for* unless he … pardons him.

## [LF 2.32]
## Qui testes sint necessarii ad probandam novam investituram[1]

Sive clericus sive laicus sit dominus, ad probandam novam investituram semper pares curtis[2] sunt necessarii; et si sine eis facta sit investitura, etiamsi dominus confiteatur factam, quia tamen sine hac sollemnitate facta est, non valet, etiamsi probari possit per breve testatum. Sed alii[3] contra testantur, etsi dominus confiteatur factam, decurrens postea ad sollemnitatem consuetudinis non audiatur, sed tale habeatur ac si pares adfuissent. Sed alii, etiam si probari possit per breve testatum, ut Obertus et Gerardus, nisi a paribus[4] fuerit confirmatum.[5] Consules tamen Mediolanenses nuper quibusdam omnia[6] contra rescripserunt, in quo fere omnes Mediolanenses consenserunt et consentiunt, ut breve testatum non a paribus sed ab aliis confirmatum sufficiat ad probandam novam investituram.

Novam investituram dico, quando feudum primo quaeritur. De veteri autem beneficio investiturae, quae fit a domini successore vel vasalli successore, etiam extranei recipiuntur ad testimonium, praeter feminas secundum usum Mediolanensium. Istae enim nec in causis feudi nec aliorum recipiuntur ad testimonium, ceteri autem in omnibus recipiuntur, quae ad causas feudi pertinent, praeterquam de nova investitura.

[1] *V2* Qui testes sunt necessarii ad novam investituram probandam. [2] *V2* curiae. [3] *V2* Sed si alii. [4] *V2* a paribus curiae. [5] *V1 suggests that this text is mutilated and that* Sed alii contra … Obertus et Gerardus *derives from the insertion of a gloss. Consequently,* nisi a paribus confirmatum *would be originally attached to the previous text.* [6] *V2 omits* omnia.

## [LF 2.32]
## What witnesses are necessary to prove a new investiture

Regardless of whether the lord is a cleric or a layman, the peers of his court are always necessary to prove a new investiture. And if an investiture has been made without them, even if the lord acknowledges that it was made, nonetheless, since it has been made without this formality, it has no effect even if it can be proved through a certified charter. However, others testify against this; if the lord, although he acknowledges that [the investiture] was made, then resorts to the [defect of] customary formality, he is not to be heard[1] but [the matter] is to be considered as if peers had been present. But others, such as Obertus and Gerardus, [hold that] even though an investiture can be proved through a certified charter, [it has no effect] if it is not confirmed by peers.[2] Nonetheless, the Milanese consuls have recently answered in a rescript to certain persons[3] contrary to all these [opinions]—and nearly all the Milanese have agreed and still agree with them on this—that a certified charter confirmed not by peers, but others, is to be sufficient to prove a new investiture.

I call it a new investiture when a fief is sought for the first time. On the other hand, at an investiture concerning an old benefice, which is made either by a lord's successor or to a vassal's successor,[4] even outsiders are accepted to testify, but not women, according to the usage of the Milanese people. For the latter are accepted to testify neither in cases about fiefs nor in cases about other matters; the former, on the contrary, are accepted in all that concerns cases about fiefs, except concerning a new investiture.

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[1] *V2* However, if others testify against him, and although the lord acknowledges that it was made, he is not to be heard if he then resorts to the [defect of] customary formality. [2] *The first part of this title offers two divergent opinions. According to the first one, peers ought to be present at a new investiture to prove its validity, no matter if the lord believes it to be valid or an official record attests to it. The second one suggests that if a lord has acknowledged the effectiveness of an investiture, and this was recorded in an official record, then he cannot plead the defect of the customary formalities, i.e. the presence of peers, to withdraw. Therefore, the charter should have effect just as if peers had been present at the investiture; however, some others, e.g. Obertus and Gerardus, say that peers have to confirm the charter for it to have probative value.* [3] *This probably is a reference to a 'consilium' in which a panel of Milanese officers was requested by letter to provide legal advice in a court case.* [4] *Lit.* or by a vassal's successor.

## [LF 2.33]
## De consuetudine recti feudi

[pr.] Sciendum est itaque, feudum acquiri investitura, successione vel eo, quod habeatur pro investitura, ut ecce si dominus alicui coram curia[1] dixerit: 'Vade in possessionem illius fundi et teneas ipsum[2] pro feudo'. Licet enim non intercessisset investitura, tamen tale est ac si intervenisset,[3] quia ille eius voluntate possessionem feudi[4] nactus est feudi nomine.

[§ 1][5] Inde etiam dicitur, quod, si aliquis probaverit, se aliquid nomine beneficii aliquo tempore tenuisse domino praesente et non contradicente et servitium eius quasi a vasallo recipiente, licet non probet investituram, veruntamen obtinebit praestito iuramento, nisi aliud contra inducatur. [*V2 2.33.1*] Quod autem dictum est, ut per pares probetur investitura, dictum est[6] de eo domino, qui alios habet vasallos, ceterum sufficiunt extranei[.] Nec dicatur ideo investituram, ubi sine paribus facta est, non valere, quoniam tunc temporis pares aberant, quia, etiamsi absint, tamen exspectandi sunt.

[§ 2] Sacramentum non semper est dandum possidenti sed quandoque possidenti, quandoque petenti, quandoque neutri; et cum alicui eorum[7] datur, ita demum datur, si aliquid pro eo sit, quod iudicem moveat. Ubi nihil est, quod faciat pro aliquo eorum praeter possessionem solam, tunc, secundum quod iudici melius visum fuerit, aut possidenti dabitur sacramentum aut actore non[8] probante qui convenitur, etiamsi nihil praestiterit, obtineat.[9]

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[1] *V2* coram paribus curiae. [2] *V2* illum. [3] *V2* ac si intercessisset. [4] *V2* fundi. [5] *V2 has this text as part of 2.33pr.* [6] *V2* intelligendum est. [7] *V2* horum. [8] *V2* actore nihil. [9] *V2* obtinet.

## [LF 2.33]
## Concerning the custom of rightful fiefs

[pr.] It should be known, therefore, that a fief is acquired by investiture, succession, or what is to be considered as an investiture, as when a lord says to someone in the presence of his court, 'Go into possession of that piece of land, and you are to hold it as a fief'. Because, although no investiture took place, it is nonetheless just as if it had taken place since he has obtained possession of the piece of land as a fief by the lord's will.

[§ 1][1] Hence, it is also said that if anyone proves he has held something at some time as a benefice, and the lord is present, does not contradict him, and receives his service as if from a vassal, although he does not prove investiture, he will nonetheless obtain the benefice after taking an oath, unless evidence is produced against it. [*V2 2.33.1*] And what has been said, i.e. that investiture is to be proved through peers, is said concerning that lord who has other vassals; otherwise, outsiders are sufficient. One is not to say, for this reason, that an investiture that took place without peers has no effect because peers were away at that time, because even if they are away, they must nonetheless be awaited.[2]

[§ 2] The oath[3] should not always be given to the possessor, but sometimes to the possessor, sometimes to the plaintiff, and sometimes to neither. And when it is given to any of them, it is only given if there is anything in their favour that sways the judge. When nothing is in favour of any of them besides possession alone, then, according to what seems best to the judge, either the oath will be given to the possessor or, should the plaintiff fail in his proof, the defendant wins the case even without taking an oath.

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[1] *V2 has this text as part of 2.33pr.* [2] *The tradition of this passage is problematic. This translation rests on V1 and V2. V3 omits* ideo *and* non, *changing the meaning of the sentence substantially*: One is not to say that an investiture that is made without peers is valid, since peers were away at that moment, and [also] because even if they are away, they must nonetheless be awaited. *A further solution is offered by some manuscripts transmitting intermediate recensions of the LF. Vat2 (f. 27$^{ra}$)*: Nec dicatur ideo investitura sine paribus valere quoniam temporis pares aberant admittendum est, quia eciam si absint tamen expectandi sunt (*'One is not to say, for this reason, that an investiture that took place without peers is valid since one must admit that the peers were away at that moment, because even if they are away, they must nonetheless be awaited'*). *Similar solutions: Par. (f. 124$^{vb}$); Roma (f. 130$^{vb}$); Salz. (f. 59$^{rb}$); SG (f. 112$^{a}$).* [3] *I.e., defence by oath.*

Et cum datur, aut datur a iudice aut a parte. Si a parte, aut subeat cum duodecim sacramentalibus secundum inferiorem distinctionem aut referat pars, cui delatum est; si a iudice, iuret ille, cui delatum est, cum duodecim vasallis,[1] cum sex parentibus, ceteros vero,[2] si vult, habeat extraneos; dominus vero, si vult, cum parentibus aut cum vasallis solis aut cum parentibus[3] vel cum extraneis mixtis parentibus vel vasallis. Et iurabit vasallus semper sine mentione conscientiae, dominusque de suo facto similiter, de facto vero patris vel avi aut alterius ascendentis iuramento conscientiam solam apponet.[4] Quidam tamen dicunt, non quidem conscientiam esse apponendam.[5]

[§ 3] In quibusdam[6] etiam causis sacramentum calumniae a domino non exigetur. Quod nuper rex Fredericus in Roncalia fecit. Constituit enim, ut[7] vasallus sacramentum calumniae a domino non exigat. Quod etiam a parte domini intelligendum est, ut 'quod quisque iuris in alterum statuit, ipse eodem iure utatur'.[8]

[§ 4] Similiter vasallus dominum accusare vel testimonium contra eum reddere non potest[9] in civili causa modica[10] aut criminali. Quidam tamen dicunt, in criminali non licere, in civili[11] licere. In quibus si contra fecerit, feudo privabitur.

[§ 5] Item[12] si inter dominum et vasallum controversia sit de beneficio, domino possidente et vasallo in probatione deficiente, qui convenitur nullo praestito iuramento absolvatur; vasallo vero possidente et actore in probatione

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[1] *V2* cum duodecim sacramentalibus, vasallus. [2] *V2 omits* vero. [3] *V3* cum parentibus vassalli. [4] *V2* conscientia praeponetur *for* conscientiam solam apponet. [5] *V2* praeponendam. [6] *V2* In quibus. [7] *V2* rex Fredericus in Roncalia constituit ut. [8] *Quot. from Dig. 2.2.* [9] *V2* non debet. [10] *V2 omits* modica. [11] *V2* in civili modica. [12] *V2 omits* Item.

When [the oath] is given, it is given upon request either by the judge or one party. If upon request by one party, the party to which it is assigned is to either undergo it with twelve oath-helpers according to the distinction that follows or hand it over. If [it is given] upon request of the judge, he to whom it is assigned is to swear with twelve vassals, [or] with six relatives,[1] but as for the remaining ones, if he wishes, he may have outsiders. But the lord may swear, if he wishes, with relatives alone, or vassals, alone or with relatives, or with outsiders combined with relatives or vassals. And the vassal shall always swear without mentioning [that this is to the best of] his knowledge.[2] And the lord similarly in respect to his own actions; but concerning the actions of his father, grandfather, or any other ancestor, he will add in his oath that this is to the best of his knowledge [of those actions].[3] However, some say that [the reference on] the best of his knowledge should not be added.

[§ 3] Also, in some cases, a lord shall not be required to take an oath of calumny.[4] King Frederick [I] recently decided this in Roncaglia, for he decreed that a vassal is not to require an oath of calumny from his lord. This must be understood [to apply] also on the lord's part, for 'each one must himself use the law which he has established for others'.[5]

[§ 4] Likewise, a vassal may not accuse or testify against his lord in a minor civil case or a criminal case. However, some say that it is not permitted in a criminal case but is permitted in a civil case.[6] If he acts to the contrary in these [cases], he shall be deprived of his fief.

[§ 5] Also, if there is a dispute over a benefice between a lord and a vassal, with the lord possessing and the vassal failing in his proof, the defendant[7] is to be cleared without taking an oath. However, if the vassal possesses and the plaintiff[8] fails in his proof, and the vassal has been in possession for a long

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[1] *V2* ought to swear with twelve oath-helpers: a vassal with six relatives. *The interpretation of this passage is problematic. V2 seems to be clearer in that it suggests that twelve oath-helpers are always required: in the case of a vassal, at least six of them should be his relatives; a lord, on the other hand, has more freedom of choice. However, V2 explicitly deviates from the 'vulgata' tradition, while V3 and most of the manuscripts I have consulted agree with V1 and present the same uncertainty.* [2] *I.e., he should swear in respect to what he knows with certainty, not what he believes to be true.* [3] *I.e., he may swear only relying on his knowledge.* [4] *An oath attesting to one's good faith.* [5] *Quot. from Dig. 2.2.* [6] *V2* Likewise, a vassal ought not to accuse or testify against his lord in a civil or criminal case. However, some say that he is not permitted [to do so] in a criminal case, but he is permitted in a minor civil case. [7] *I.e., the lord.* [8] *I.e., the lord. This chapter implies that the claim is always lay against him who is in possession. If the lord possesses the property, then he is the defendant, if the vassal possesses, then the lord is the plaintiff.*

deficiente, si longa sit vasalli possessio, eius iuramento causa finiatur. Ubi vero nova est possessio, sacramentum ei non praestabitur, sed domino deferetur, nisi aliud pro possidente faciat.

## [LF 2.34]
## De lege Conradi

[pr.] Lex Conradi de beneficiis, quae dicit 'Si inter capitaneos controversia sit, coram rege finiatur, si inter valvasores, coram paribus curiae', Mediolani non tenetur, sed talis distinctio ibi observatur, quod,[1] si inter duos, quicunque fuerint, de beneficio regali controversia sit,[2] quorum uterque a rege se asserit[3] investitum esse, tunc causa coram eo decidatur, ceterae vero causae apud pares curiae.

[§ 1] Si inter pares duos de aliquo beneficio controversia sit, quorum uterque suum feudum proprium esse dicat, sive asserant eundem investitorem sive diversos, coram iudice vel arbitro finiatur. Sed cum unum producunt investitorem, si possidenti sine fraude dominus guarentare voluerit, ipse obtinebit, nisi adversarius contra aliquid induxerit.

[§ 2] Ex eadem lege descendit, quod dominus sine voluntate vasalli feudum alienare non potest. Quod Mediolani non obtinet. Ibi enim sine curia etiam totum beneficium recte alienatur, dum tamen aut aequali domino aut maiori vendatur. Inferiori vero sine voluntate vasalli non licet, nec licet partem alienare[4] etiam maiore retenta alia parte feudi; verbi gratia est vasallus, qui ab eodem domino in pluribus locis feudum tenet; si partem feudi in uno loco vendat, in alio sibi retineat, iste non debet emptori servire, sed per priorem dominum totum beneficium cognoscere.[5] Cum curia vero cuicunque benefi-

[1] *V2* quia. [2] *V2* fuerit. [3] *V2* dicit. [4] *V2* Inferiori vero sine voluntate vasalli non licet partem alienare. [5] *V2* recognoscere.

time, the case is to be determined by his oath. However, when the possession is recent, the oath is not to be offered to him but assigned to the lord, unless there is anything else in favour of the possessor.

### [LF 2.34]
### Concerning Conrad's decree

[pr.] The decree of Conrad concerning benefices, which says 'If there is a dispute among 'capitanei', it should be determined before the king, if among 'valvasores', before the peers of the court', does not hold in Milan. Rather, the following distinction is observed that, if there is a dispute over a royal benefice between two persons, whoever they may be, and both of them assert that they had been invested by the king, then the case is to be decided before him. However, every other case is to be decided before the peers of the court.

[§1] If there is a dispute over some benefice between two peers, both of whom declare it to be his own fief, regardless of whether they assert the same grantor or different ones, the dispute is to be determined before a judge or an arbitrator. However, when they produce only one grantor, if this lord wishes to act, without deceit, as a guarantor for the possessor, [the possessor] shall win the case, unless the opponent produces something against it.

[§2] It derives from the same decree that a lord cannot alienate a fief without the vassal's consent—which does not hold in Milan, for here, even an entire benefice is rightly alienated independently of the 'curia'[1] [to which the benefice belongs], provided that it is sold to a lord of equal or higher status. However, it is not permitted to sell it to a [lord] of lower status without the vassal's consent. Nor is it permitted to alienate a portion of it, even retaining the other, greater portion of the fief. For example, a vassal holds from the same lord a fief located in different places; if the lord sells a portion of the fief located in one place and retains [a portion located] in another place, the vassal ought not to serve the buyer [of the first portion] but acknowledge that he holds the whole benefice from the prior lord. On the other hand, if [a lord alienates a fief] together with the 'curia' [to which the fief belongs], he can alienate it to anyone, even a peasant, and without the vassal's consent, provided that he alienates the entire

[1] *I.e., a signorial district, see Glossary.*

cium, etiam rustico, et sine vasalli voluntate potest, dum tamen totum alienet.[1] Obertus. Quidam alii dicunt, et[2] Gerardus, non valere, si fiat inferiori.

[§ 3] Similiter nec vasallus feudum sine voluntate domini alienabit. In feudum tamen recte dabit, si secunda persona talis sit, quae feudum servire possit, ut, si dans miles est, et ille qui feudum accepit, miles inveniatur ad hoc, ut feudum, si contigerit, domino similiter servire ut prior[3] possit. Et hoc ut dare liceat in infinitum. In quibusdam tamen curiis ultra tertiam personam feudi consuetudo[4] non extenditur, ut, cum feudum pervenit in quartam personam, dominus ei auferre possit.

Profecto ille, qui suum beneficium alii dat in feudum, non debet alia lege dare nisi, qua ipse habeat, ut, si habet[5] 'sibi suisque heredibus'—quod intelligi debet de solis masculis—non debeat[6] alii dare, ut habeat 'ipse et sui heredes, masculi et feminae'. Unde quibusdam placet, ut eo ipso feudum amittat, ut Gerardus. Alii: et qui dedit et cui datum est[7] beneficium perdit. Secundum alios vero tunc domino aperitur, cum masculi defecerint.

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[1] *V2* non totum alienet. [2] *V2* ut. [3] *V2* ut et prior. [4] *V2* concessio. [5] *V2* habeat. [6] *V2* debet.
[7] *V2* Unde quibusdam placet quod qui taliter dedit, eo ipso beneficium amittit. Gerardus et alii dicunt, quod qui dedit, et cui datum est.

benefice.[1] [This is the opinion of] Obertus. Some others and Gerardus say that it has no effect if the alienation is made to a lesser person.[2]

[§ 3] Likewise, a vassal shall not alienate a fief without the lord's consent. Nonetheless, he will rightly give it in fief, if the second holder is of such condition that he can render service for the fief. For instance, if he who gives [in fief] is a knight, the one who receives the fief should also be found to be a knight, for the reason that, if needed, he can render service for the fief to the lord just as the first [holder] could. It should be permitted to give this [fief] ad infinitum; however, in some courts, the custom of fiefs[3] does not extend beyond the third holder so that, when the fief comes to a fourth holder, the lord can take it away from him.

Undoubtedly, the one who gives his benefice in fief to another ought to give it on no other condition than the one on which he has it. For instance, if he has it 'for himself and his heirs'—which ought to be understood as only concerning male heirs—he ought not to give it to another so that he and his male and female heirs have it. Consequently, to some, such as Gerardus, it seems correct that he is to lose the fief for that very reason. Others [say that][4] both he who gives it and he to whom it is given lose the benefice. According to some others, however, it becomes vacant for the lord only when there are no male heirs.

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[1] *V2* provided that he does not alienate the entire benefice. *The gloss does not tackle this issue; glossators and commentators* (*see footnote below*) *had before their eyes a text omitting* non, *as V1. For this reason, I have opted to ignore* non. [2] *Clyde* (*1129–1130*) *and Spruit-Chorus* (*71–72*) *have interpreted 'curia' as a lord's council, thus distinguishing between the lord's alienation of a fief with or without his council's advice. Nonetheless, this passage seems to bear a different meaning. Glossators and commentators, such as Ardizone, Andreas de Isernia, Iacobus de Belviso, interpreted 'curia' as signorial district* (*a synonym of 'curtis'*), *distinguishing between the alienation of a fief independently of, or together with, the district or lordship in which the fief is located. Ardizone gives some analogies of fiefs as attachments to a 'curia', which are often sold together with the whole district* (Iacobus de Ardizone, *Summa feudorum*, f. 24$^{vb}$–25$^{ra}$). *The gloss 'totum' seems to confirm this interpretation, stressing that 'licite cum universitate transeunt quae alias transire non possunt'* (*'together with the whole, is legitimately transferred what cannot be transferred otherwise'*). *The same principle is expounded by Belviso* (Iacobus de Belviso, *Apparatus*, f. 99$^{ra}$: *'feudum transit cum curia et universitate'*). *See also LF 2.51, which discusses whether the sale of a 'curia' or 'curtis' should include the fiefs located in it, where the terms 'curtis' and 'curia' are interchangeable. Fiefs entirely enclosed within signorial districts called 'curiae' or 'curtes' are also described in LF 1.4.5 and 1.5.9. The underlying principle of LF 2.34.2, therefore, would be that a lord cannot endanger the unity of a fief without the vassal's consent—i.e., he can only sell the fief as a whole either to a greater or equal lord, if the fief becomes a direct dependence of the buyer* (*'sine curia'*), *or, according to Obertus, to anyone, but only if the sale concerns the whole signorial district* (*'cum curia'*). *On the other hand, a vassal's refusal should not hinder the lord's capacity to alienate his goods.* [3] *V2* the [sub-]grant of a fief. [4] *V2* Consequently, to some it seems correct that he who gave it in such manner loses the fief for this reason. Gerardus and others say that.

[§ 4] Si fuerit inter dominum et vasallum de feudo[1] controversia, domino dicente: 'Hoc, quod tenes, in feudum a me habes', ille vero negaverit, si quidem prorsus, et[2] probatum fuerit, ipsum ab eo auferatur. Sed cum dubitanter responsum fuerit 'Nescio', minime[3] secundum quosdam; sed secundum alios tunc demum privabitur, si fraudulenter, id est sciens, hoc negaverit.

## [LF 2.35]
## De clerico, qui investituram facit

Clerico investituram faciente de suis bonis, eius successor omnifariam cogitur eam adimplere, cumque de bonis ecclesiae eam fecerit, si possessio rei per beneficium[4] investitae penes eum fuerit, ipse et eius successor eam[5] adimpleant, quod etiam in laico[6] contingit. Ubi vero de alterius feudo fecerit investituram, si quidem pure, non valeat, sed si sub tempore vel conditione, quo feudum sibi aperiatur, valebit investitura etiam sine voluntate vasalli facta. Si tamen ante decesserit investitor, quam feudum ad eum revertatur, successor non cogitur eam habere ratam, aut cum[7] se vivente feudum apertum fuerit, possessionem tradat et investituram adimpleat. Et ideo sciendum est, archiepiscopum Mediolanensem non posse dare in feudum, quod tempore introitus sui in dominico invenerit, sed, si ei postea feudum aperiatur, ipsum recte dabit. Profecto alii episcopi et clerici ea, quae in dominico habent, et feuda his aperta olim dederunt et hodie dant.

## [LF 2.36]
## An mutus vel alias imperfectus feudum amittat

Mutus et surdus, coecus, claudus, vel aliter imperfectus[8] totum feudum paternum retinebit. Obertus et Gerardus et multi alii. Quidam tamen dicunt, eum, qui talis natus est, feudum retinere non posse, quia ipsum servire non valet. Sic dicimus in clerico et in femina et in similibus.

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[1] *V2* beneficio. [2] *V2* ille vero negaverit prorsus, si quidem. [3] *V1 offers misleading punctuation for this sentence*: 'Nescio minime'. [4] *V2* pro beneficio. [5] *V2* ipsam. [6] *V2* laicis. [7] *V2* quum autem *for* aut cum. [8] *V2 adds* etiamsi sic natus fuerit.

[§ 4] If there is a dispute over a fief between a lord and a vassal, with the lord saying 'what you hold, you have in fief from me', and the latter denies it, if indeed [the lord's point] is exhaustively proved,[1] the fief should be taken away from him. But when the vassal answers doubtfully: 'I do not know', according to some he shall not [lose the fief]; but according to others, he shall be deprived [of it], but only if he denies this deceitfully, that is, knowingly.

## [LF 2.35]
## Concerning a cleric who makes an investiture

When a cleric makes an investiture out of his own goods, his successor is obliged to fulfil it in every way. When he makes an investiture out of a church's goods, if he is in possession of the thing which he has granted as a benefice, he and his successor are to fulfil it—which also applies to laypersons. However, when he makes an investiture of another's fief, if indeed he does so unconditionally, it is to have no effect; but if he makes it pending the moment or the fulfilment of a condition by which the fief becomes vacant for him, the investiture shall have effect even if made without the [current] vassal's consent. Nonetheless, if the grantor dies before the fief reverts to him, the successor is not obliged to confirm the investiture. When, on the other hand, the fief has become vacant while he [i.e., the grantor] is alive, he is to hand over possession and fulfil the investiture. Hence, it should be known that the Milanese archbishop cannot give in fief what he found in [the church's] demesne at the time of his installation. However, if a fief becomes vacant for him thereafter, he may rightly give it. Undoubtedly, other bishops and clerics have given in the past, as they give in the present, what they have in demesne as well as the fiefs that have become vacant for them.

## [LF 2.36]
## Whether a mute or otherwise disabled person is to lose the fief

A mute, deaf, blind, lame, or otherwise impaired person[2] shall retain the entire ancestral fief, [according to] Obertus, Gerardus, and many others. Some nonetheless say that he who is born in such condition cannot retain a fief because he is unable to render service for it. We say the same in the case of a cleric, a woman, and the like.

[1] *V2* and the latter denies it completely, if indeed [the lord's point] is proved, [2] *V2 adds* even if they are born in such condition.

## [LF 2.37]
## AN ILLE, QUI INTERFECERIT[1] FRATREM DOMINI SUI, FEUDUM AMITTAT

[pr.] Si quis interfecerit fratrem domini sui, non ideo beneficium perdit;[2] sed si fratrem suum interfecerit ad hoc, ut totam hereditatem habeat, vel aliam feloniam commiserit, verbi gratia hominem tradendo, ut in curia amplius stare non possit, beneficio privabitur; quia tamen erga dominum non fuerit facta, ad agnatum proximiorem feudum pertinebit, si paternum fuerit, eodem prorsus observando quantum ad ordinem gradus, qui in legibus continetur. Cum autem ad dominum respicit felonia, tunc feudum domino aperiatur[3].

[§1] Non cogitur vasallus omnino secundum usum Mediolanensem dominum adire et servitium ei offerre, sed, cum ei nunciatum fuerit, tunc domino, si potest, serviat.

## [LF 2.38]
## DE VASALLO, QUI CONTRA CONSTITUTIONEM LOTHARII[4] BENEFICIUM ALIENAVIT

Si vasallus contra constitutionem Lotharii regis beneficium alienaverit, si totum, perdet totum; si partem, partem perdet et ad dominum revertetur. Et ideo, si contra unum dominorum, quorum communis vasallus erat, feloniam fecerit, eum forte cucurbitando, eius solius parte privabitur; et si voluerit unius solius partem refutare aliis sibi reservatis, hoc facere poterit, quia vasallus etiam sine domini voluntate recte feudum refutare potest, post refutationem tamen ad serviendum[5] non tenetur, sed eum offendere non debet.

## [LF 2.39]
## DE ALIENATIONE FEUDI PATERNI

[pr.] Alienatio feudi paterni non valet etiam domini voluntate nisi agnatis consentientibus, ad quos beneficium quandoque sit reversurum, nec in filiam vasallus feudum poterit confirmare agnatis non consentientibus vel postea

[1] *V2* interfecit. [2] *V2* amittit. [3] *V2* aperitur. [4] *V2* Lotharii regis. [5] *V2* ad serviendum quidem.

### [LF 2.37]
### Whether he who kills his lord's brother is to lose the fief

[pr.] If someone kills his lord's brother, he does not lose the benefice for this reason. However, if he kills his own brother so as to have the entire inheritance, or commits another felony—for example by betraying a man—for which he can no longer remain in the lord's court, he shall be deprived of the benefice. Nonetheless, since such a felony has not been committed against the lord, the fief, if ancestral, shall belong to the closest agnate, observing fully what is contained in the laws concerning the order of the degrees [of relationship]. When indeed the felony relates to the lord, then the fief is to become vacant for the lord.

[§1] According to the Milanese usage, a vassal is not generally obliged to approach his lord and offer service to him, but when he is given notice, then he is to render service to the lord if he can.

### [LF 2.38]
### Concerning a vassal who alienated a benefice contrary to Lothair's constitution

If a vassal alienates a benefice contrary to King Lothair's constitution,[1] if he alienates it all, he is to lose it all, if a portion, he is to lose a portion, and it is to revert to the lord. Therefore, if he commits a felony against one of the lords of whom he is a shared vassal,[2] perhaps by cuckolding him, he shall be deprived only of that lord's portion of the fief. And if he wishes to renounce the portion of only one of them while retaining the others, he can do this, because a vassal can rightly renounce a fief even without the lord's consent. Nonetheless, after that surrender he is not bound to render service, but he ought not to commit any offence against him.

### [LF 2.39]
### Concerning alienation of an ancestral fief

[pr.] Alienation of an ancestral fief has no effect even [if made] with the lord's approval unless the agnates to whom the benefice would at some time revert consent. Nor can a vassal confirm a fief to his daughter if the agnates do not consent or ratify it afterwards. And although alienation of a benefice is pro-

[1] *LF 2.52.1.* [2] *I.e., a vassal of more than one lord for the same fief.*

ratum non habentibus. Et licet prohibeatur beneficii alienatio, inter agnatos tamen, si paternum fuit, conceditur. Et si libellum unus alteri fecerit de feudo paterno, non est libellus sed quasi refutatio.

[§ 1] Si inter dominum et vasallum de beneficio fuerit controversia, coram paribus finiatur. Ubi autem dicit vasallus, prius de suo recto feudo se debere a domino investiri, si quidem sine controversia de alio sit vasallus, indubitanter primo investiendus est et postea cognoscendum est, quod sit suum rectum feudum et[1] quod non. Sed si nihil aliud ab eo tenet pro beneficio, nisi de quo controversia est, tunc quoque causa ventilanda[2] est et sic videbimus,[3] utrum postea investiendus sit.

[§ 2] Non est consuetudo Mediolani, ut de felonia aut de infidelitate pugna fiat, licet contrarium sit, quod praecepit lex Lombardorum, ut de infidelitate pugna fiat.

[§ 3] Si a morte dominum vasallus liberare potuerit et non fecerit, beneficio carebit; sed licet potuerit facere, ne dominus in peccatum praecipitaretur, veluti periurium, non tamen feudo privandus erit.

## [LF 2.40]
## De capitulis Conradi

[pr.] Haec sunt capitula, quae rex Conradus fecit in Roncalia de beneficiis. Constituit enim ut, si post mortem domini vasallus vel post mortem vasalli heredes eius per annum et diem steterint, quod dominum vel heredem eius non adierint fidelitatem pollicendo et investituram petendo, si tale sit beneficium, ut fidelitas sit praestanda, ipsum perdant, sicut et antiquitus fuit consuetudo, sed non Mediolani.

[§ 1] Praeterea ut liceat dominis, omnes alienationes feudi factas nulla obstante praescriptione revocare.

[§ 2] Similiter in petendis hostenditiis. Hostenditiae dicuntur adiutorium, quod faciunt dominis Romam cum rege in hostem persequentibus[4] vasalli, qui cum eis non vadunt; verbi gratia in Lombardia de modio 12 denarios, in Theutonica terra tertiam partem fructuum, facta computatione fructuum solummodo eius anni, quo hostem faciunt.

[1] *V2* aut. [2] *V2* tunc causa prius ventilanda. [3] *V2* videndum. [4] *V2* pergentibus.

hibited, it is nonetheless allowed among agnates if the benefice was ancestral. And if one agnate makes a lease of an ancestral fief to another agnate, it is not a lease but as if it were a surrender.

[§1] If there is a dispute over a benefice between a lord and a vassal, it is to be determined before the peers [of the lord's court]. When, however, the vassal says that he ought first to be invested by the lord with his rightful fief, if indeed he is his vassal for another [fief] over which there is no dispute, he must undoubtedly be first invested, and then there should be an investigation into what is his rightful fief and what is not. However, if he does not hold anything else from him as a benefice except the [thing] in dispute, then the case must be examined and, in this manner, we shall see whether he should be invested afterwards.

[§2] It is not the custom of Milan that there is to be trial by battle for felony or infidelity, although this is contrary to what the Lombard law ordered, that trial by battle is to take place for infidelity.

[§3] If a vassal can rescue his lord from death and does not do so, he shall be deprived of the benefice. However, even though he can prevent his lord from committing a transgression, such as perjury, [and does not do so], he nonetheless shall not be deprived of the fief.

## [LF 2.40]
## Concerning Conrad's chapters

[pr.] These are the chapters that King Conrad issued in Roncaglia concerning benefices. Indeed, he decreed that if after a lord's death his vassal, or after a vassal's death his heirs, remain for a year and a day without going to the lord, or his heir, to promise fealty and seek investiture, if the benefice is of such nature that fealty must be sworn, they are to lose it, as has long been custom—but not in Milan.

[§1] Furthermore, [he decreed that] lords are to be permitted to revoke every alienation of a fief that has been made, notwithstanding any prescription.[1]

[§2] Similarly, [he decreed] on the exaction of military aids called 'hostenditiae'. 'Hostenditiae' are aids supplied by vassals who do not join their lords in the royal expedition to Rome—for example, in Lombardy twelve *denarii* for each bushel, in the Teutonic land the third part of the fruits, only reckoning the fruits of the year in which they are to join the expedition.

[1] *On 'praescriptio', see Glossary.*

[§ 3] Et iterum[1] si clericus, veluti episcopus, abbas beneficium habens a rege datum non solummodo personae sed ecclesiae, ipsum propter suam culpam perdat, eo vivente et ecclesiasticum honorem habente, ad regem pertineat, post mortem vero eius ad successorem eius revertatur.

## [LF 2.41]
## De controversia inter masculum et feminam de beneficio

[pr.] Item sciendum est, quod si inter marem[2] et feminam controversia fuerit, masculo dicente 'hoc est feudum', femina negante, nisi apertibus probationibus femina ostenderit, non esse feudum, credatur[3] masculo, suo iuramento affirmanti cum duodecim sacramentalibus.

[§ 1] Sed si inter dominum et feminam, domino dicente feudum, femina negante, probationibus deficientibus detur feminae sacramentum. [*V2* 2.41.2][4] Quidam tamen distinguunt, ut si magna eorum pars, quae vasallus ibi tenebat, feudum sit, detur domino sacramentum, alibi feminae.

## [LF 2.42]
## De controversia inter dominum et emptorem[5]

[pr.] [*V2* 2.41.2][6] Item si sit inter dominum et emptorem feudi, si emptor dicat, non esse feudum, domino in probatione deficiente sacramento emptoris finiatur.

[§ 1] [*V2* 2.42pr.] Domino cum emptore feudi agente, si vasallus iurare poterit, quod ignorans beneficium vendidisset credens proprium, electioni emptori committitur, utrum domino velit ipsum cedere an vasallo restituere.[7] [*V2* 2.42.1] Quo restituto id beneficium vasallus retinebit non nocente[8] venditione eo, quod ignorans alienasset.

[§ 2][9] Quod dicitur, alienatione feudum domino aperiri, intelligendum est, cum a scientibus beneficium venditur.[10] Et quod dicitur de venditione, idem est in omnibus alienationibus.

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[1] *V2* Item *for* Et iterum. [2] *V2* masculum. [3] *V2* creditur. [4] *V2 has here, as 2.41.2 what in V1 amounts to 2.42pr. Therefore, in V2* Quidam tamen … alibi feminae *is the second part of 2.41.2.* [5] *V2* emtorem feudi. [6] *V2 has* Item … finiatur *as the first part of 2.41.2.* [7] *V2 adds* Obertus dicit omnia vasallo restituenda. [8] *V2* non nocente nec obstante. [9] *V2 has this § attached to V2 2.42.1, with no interruptions* eo quod ignorans alienavit, et quod dicitur. [10] *V2* alienatur.

[§ 3] Again, if a cleric, such as a bishop or an abbot, who has a benefice given by the king not just to him but to the church, loses it by his own fault, as long as he is alive and has ecclesiastical office the benefice is to belong to the king. However, after his death[1] it is to revert to his successor.

## [LF 2.41]
## Concerning a dispute over a benefice between a man and a woman

[pr.] It should also be known that if there is a dispute between a man and a woman, with the man saying: 'This is a fief' and the woman denying it, unless the woman proves through unambiguous evidence that it is not a fief, one is to believe the man, who confirms [his claim] by his oath with twelve oath-helpers.

[§ 1] If, however, [the dispute] is between a lord and a woman, and the lord says it is a fief, and the woman denies it, in the absence of proof, the oath[2] is to be given to the woman. [*V2* 2.41.2] Some nonetheless distinguish that if the majority of what the vassal held there [where the disputed property lies] is a fief, the oath is to be given to the lord; otherwise, to the woman.

## [LF 2.42]
## Concerning a dispute between a lord and the purchaser[3]

[pr.] [*V2* 2.41.2][4] Again, if [the dispute] is between a lord and the purchaser of a fief, and the purchaser asserts it is not a fief, and the lord fails in his proof, it is to be determined through the oath of the purchaser.

[§ 1] [*V2* 2.42pr.] When the lord brings an action against the purchaser of a fief, if the vassal can swear that he unwittingly sold the benefice, believing it to be his property, it is left to the purchaser's preference whether he wants to hand it over to the lord or restore it to the vassal.[5] [*V2* 2.42.1] If it has been restored, the vassal shall retain that benefice without the sale damaging him, because he had alienated it unwittingly.

[§ 2][6] When it is said that a fief becomes vacant for the lord on grounds of alienation, this must be understood as when a benefice is sold wittingly. And what is said concerning a sale is the same for all alienations.

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[1] *I.e., of the cleric.* [2] *I.e. defence by oath.* [3] *V2* purchaser of a fief. [4] *V2 has* Item … finiatur *as the first part of 2.41.2.* [5] *V2 adds* Obertus says that everything must be restored to the vassal. [6] *V2 has this § attached to 2.42pr.*

## [LF 2.43]
## De controversia inter vasallum et alium de beneficio

Si controversia inter vasallum et alium de beneficio fuerit, adversario proprietatem totius vel partem vel servitutem vel aliud aliquid[1] ius sibi vendicante, causa per vasallum etiam domino absente quasi propria ad finem perducatur. Ipse enim solus utiliter agendi et excipiendi habet potestatem, et si pro eo aut contra eum iudicatum fuerit vel cum adversario transegerit, dummodo fraudulenter factum non sit, etiam si post beneficium domino aperitur, tale erit ac si eo agente[2] iudicatum fuisset, et ideo ab eo ratum haberi oportebit.

## [LF 2.44]
## Quid iuris, si post alienationem feudi vasallus id recuperet[3]

[pr.] Praeterea si vasallus ante constitutionem Lotharii regis feudum alienabat,[4] quod in quibusdam curiis pro parte, in quibusdam pro toto olim licebat, et ipsum postea recuperabat, pro feudo sibi retinebat, hoc est in causam feudi recadebat. Hodie autem, si ipsum recuperaverit,[5] tamen penes ipsum[6] non remanebit, utpote domino, ad quemcunque pervenerit, apertum.

[§ 1] Profecto si domini voluntate vendiderit vel per libellum vel aliter alienaverit, si idem postea recuperaverit,[7] penes eum remanebit, iure tamen beneficii non, sed aut proprio aut pro libello[8] aut aliter secundum quod idem recuperaverit, dummodo scias, quod si ad libellum domini voluntate id dederit, si quidem pro libello ei datur singulis forte annis, et hoc iure feudi censebitur. Illud vero ius, quod per libellum transtulerit et postea recuperaverit, pro beneficio non tenebit, sed velut alterius rei datae in libellum,[9] si feudum domino refutaverit, libellum retinebit.

[1] *V2* aliquod. [2] *V2* eo causam agente. [3] *V2* recuperaverit. [4] *V2* alienaverit. [5] *V2* Hodie autem, si ipsum alienaverit, si quidem illicite, licet postea recuperaverit. [6] *V2* eum. [7] *V2* recuperaverit feudum. [8] *V2* penes eum remanebit, non iure beneficii, sed aut iure proprio, aut iure libelli, aut aliter. [9] *V2* datae per libellum, etiam.

## [LF 2.43]
## Concerning a dispute over a benefice between a vassal and another

If there is a dispute over a benefice between a vassal and another, and the [vassal's] opponent claims ownership over the entire benefice, or a portion of it, or an easement, or some other right, the case is to be brought to an end by the vassal even in the absence of the lord, just as if it were his own [case], for he alone has the capacity to bring actions and exceptions 'utiliter'.[1] And if a judgment is pronounced in his favour or against him, or he comes to a settlement with the opponent—as long as this is not done dishonestly—, even if afterwards the benefice becomes vacant for the lord, it shall be just as if the case were judged with the lord taking part in it, and therefore the outcome will have to be ratified by him.

## [LF 2.44]
## What the law is if a vassal, after the alienation of a fief, recovers it

[pr.] Furthermore, if, before King Lothair's constitution, a vassal alienated a fief—which was once permitted in some courts for a part [of the fief], in some others for the whole—and afterwards he recovered it, he retained it as a fief, i.e. it regressed to the condition of a fief. Today, however, if he recovers it,[2] it shall not remain in his hands, since it becomes vacant for the lord regardless of the person to whom it has come.

[§1] Undoubtedly, if a vassal sells, or alienates by lease or in some other way [a fief] with the lord's consent, and then reobtains it, it shall remain in his hands not by right of benefice, but either as property, or by lease, or otherwise, depending on the condition on which he reobtains it—as long as you know that if he gives it on lease with the lord's consent, and if he receives annual rents for the lease, this [rent] shall be assessed by the law of fiefs.[3] However, that right that he transfers through a lease and then reobtains, shall not be held by him as a benefice, but just as [a right] over another property given on lease, and if he surrenders the fief to the lord, he shall retain the lease.

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[1] *I.e., to resort to legal actions and exceptions normally reserved to owners. This entails the acknowledgment of a vassal's real rights over the fiefs. For 'utiliter', see Glossary.* [2] *V2* Today, however, if he sells it, certainly unlawfully, even though he recovers it afterwards. [3] *As long as the rent is perceived by the vassal, since it is received from land enfeoffed to him, it is reckoned to be held in fief and thus falls under the law of fiefs.*

## [LF 2.45]
## An agnatus vel filius defuncti repudiata hereditate feudum retinere possit[1]

Si contigerit, vasallum sine omni prole decedere, agnatus, ad quem universa hereditas pertinet, repudiata hereditate feudum, si paternum fuerit, retinere poterit nec de debito hereditario aliquid feudi nomine solvere cogetur,[2] sed in fructibus,[3] ut de eis debitum solvatur quo tempore decesserit, secundum quod supra diximus,[4] considerabitur. Ubi vero filium reliquit, ipse non potest hereditatem sine beneficio repudiare, sed aut utrumque retineat aut utrumque repudiet. Quo repudiato ad agnatos, si paternum fuerit,[5] pertinebit, et licet alterum sine altero retinere non possit, agnatis tamen consentientibus poterit dominus eum, si voluerit, quasi de novo beneficio investire, quo facto licebit ei repudiata hereditate feudum tenere, nullo onere hereditario[6] imminente.

## [LF 2.46]
## An apud iudicem vel dominum quaestio feudi debeat terminari

Ex eo, quod supra diximus[7] ut, si inter duos de beneficio fuerit controversia, coram iudice vel arbitro finiatur, talis hic fit quaestio. Quodam sine filio decedente alius credens beneficium, quod ille[8] tenebat, apertum domino esse, ab eo investitus est eius beneficii nomine. E contra apparent agnati, qui feudum sibi vendicant quasi paternum. Est igitur quaesitum, an apud curiam domini vel iudicem sit haec quaestio ventilanda. Et responsum scio, quia ad dominum quodammodo causa spectare videtur, ad quem investitus habebit regressum de evictione, ut coram paribus finiatur curiae;[9] et licet alter per se non possit alterum trahere ad curiae iudicium, generaliter tamen, si inter duos causa fuerit de beneficio, eos curia vocante non licebit alicui eorum eius curiae iudicium declinare.

[1] *V2* An agnatus vel filius defuncti possit retinere feudum repudiata hereditate. [2] *V2* cogitur. [3] *V2* sed in fructibus, si quos reliquit. [4] *LF 2.28.3*. [5] *V2* sit. [6] *V2* onere ei hereditario. [7] *See LF 2.34.1*. [8] *V2* ipse. [9] *V2* curtis.

## [LF 2.45]
## Whether an agnate or a son of a deceased [vassal] can retain a fief after disowning the inheritance

If it happens that a vassal dies without any offspring, the agnate to whom the entire inheritance belongs can retain the fief, if it is ancestral, after he has disowned the inheritance, and he is not to be obliged to pay any hereditary debt on account of the fief. However, in respect to the fruits of the fief,[1] it shall be decided, according to what we have said above,[2] that the debt is to be paid out of them when the vassal dies. But if he leaves a son, the latter cannot disown the inheritance without [disowning] the benefice; on the contrary, he should either retain both or disown both. Once [the benefice] has been disowned, if it is ancestral, it shall belong to the agnates. And although he cannot retain one without the other, however, if the agnates consent, the lord, if he wishes, can invest him with it as if it were a new benefice. When this has been done, he shall be permitted to keep the fief, having disowned the inheritance, without any hereditary burden falling on him.

## [LF 2.46]
## Whether a dispute over a fief ought to be determined before a judge or the lord

From what we have said above,[3] i.e. that if there is a dispute between two people over a benefice, it is to be determined before a judge or an arbitrator, this question is asked. Someone dies without a son; another, believing that the benefice which that man used to hold has become vacant for the lord, is invested by him with it as a benefice. In opposition, the agnates appear and claim the fief for themselves, as if ancestral. It is therefore asked whether this case should be discussed before the lord's court or a judge. I know that it has been answered that, since the case is considered to relate in some way to the lord, to whom the grantee can have recourse for eviction, it is to be determined before the peers of the court. Although one party cannot bring the other to judgment by the [lord's] court, in general, however, if there is a lawsuit between two people over a benefice, if the court summons them, neither shall be permitted to reject judgment of that court.

[1] *V2 adds* if he has left some. [2] *LF 2.28.3*. [3] *LF 2.34.1*.

## [LF 2.47]
## Qualiter dominus proprietate[1] privetur

Ex facto quaesitum scio et ego a pluribus quaesivi: si dominus contra vasallum apertam feloniam fecerit, an, sicut vasallus beneficium amitteret, ita dominus proprietate privetur. Et quidam,[2] ex omni felonia, qua vasallus feudo privaretur, et dominus proprietate,[3] alii, non nisi ex maxima[4] felonia, alii, ex nulla. Sed prior sententia mihi placet non habita distinctione, qualis vasallus sit, utrum per sacramentum vel non.

## [LF 2.48]
## De feudo non habente propriam feudi naturam

Si quis ea lege alicui feudum dederit, 'ut ipse suique heredes et, quibus ipse dederit, id habeant'?[5] Iste,[6] qui sic accepit, poterit istud vendere, donare vel aliter, si sibi placuerit, etiam sine voluntate domini alienare, et ille, cui datum fuerit, non habebit pro feudo, nisi sicut ei datum est. Sed qualitercunque ei datum fuerit sive ad proprium sive ad libellum, licet propriam feudi naturam non habeat, iure tamen feudi censebitur, ut ex eisdem causis ipsum amittat, quibus et verum feudum. Ubi ergo sic datum est feudum 'et cui in feudum dederis', aliud est, et propriam feudi naturam habet.

## [LF 2.49]
## De eo, qui fecit finem agnato de feudo paterno

Tres erant agnati vel plures; unus eorum habebat feudum, quod erat paternum, sed alter eorum finem et refutationem 'ei suisque heredibus et cui ipse dederit', fecit. Decessit iste sine filio masculo; alter, qui non refutavit, vendicat sibi totum, alter vero, qui refutationem fecit, vult ad successionem venire pacto non obstante. Sapientes quidam Mediolanenses interrogati responderunt, non obstare, nisi feudum 'omnino' refutaverit, vel nisi ad hoc refutaverit, ut dominus eum quasi de novo beneficio investiret. Tunc enim secuta investitura nova, quasi novum sit feudum, non succedit.

[1] *V2* proprietate feudi. [2] *V2* Et quidam dicunt. [3] *V2* qua vasallus feudo privatur, et dominus proprietate privetur. [4] *V2* magna. [5] *V2* ut ipse et sui heredes, et cui ipse dederit, habeant. [6] *V2* Respondeo: iste.

## [LF 2.47]
## How a lord is to be deprived of [a fief's] ownership

I know the question has been asked emerging from a real case—and I myself have asked it to many: if a lord commits a manifest felony against a vassal, whether the lord is to be deprived of [the fief's] ownership just as the vassal would lose the benefice. Some say that the lord is to be deprived of ownership for any felony for which a vassal would be deprived of a fief; others say only for the greatest felonies; and others say for no felony at all. However, I prefer the first opinion, and I make no distinctions as to what sort of a vassal he is, whether bound by oath or not.

## [LF 2.48]
## Concerning a fief that does not possess the proper nature of a fief

If someone gives a fief to anyone on this condition, 'that he, and his heirs, and they to whom he will give it, shall have it', he who receives it in this way can sell, donate, or in any other way alienate the fief, if he wishes, even without the lord's consent. And the one to whom it is given, shall not have it as a fief unless it is given to him as such. However, regardless of how it is given to him, whether as property or on lease, although it does not possess the proper nature of a fief, it shall nonetheless be assessed by the law of fiefs, so that he is to lose it for the same reasons for which he would lose a true fief. Therefore, if a fief is granted 'to them to whom you give it in fief', the situation is different, and it possesses the proper nature of a fief.

## [LF 2.49]
## Concerning him who renounced an ancestral fief to an agnate

There were three or more agnates; one of them possessed a fief that was ancestral, and another of them renounced it 'to him, to his heirs, and to whom he would give it'. The former died without a son; a third one, who has not renounced it, claims the whole fief; the second one, who made the renunciation, wants to succeed notwithstanding the agreement. When consulted, the Milanese experts answered that the agreement does not stand against him unless he renounced the fief altogether, or unless he renounced it so that the lord would invest [the first one] with it as if it were a new benefice: for then, after a new investiture has been obtained, just as if the fief were new, he does not succeed.

## [LF 2.50]
## De natura successionis feudi

Successionis feudi talis est natura, quod ascendentes non succedunt, verbi gratia pater filio. Inferius vero filius patri succedit et non filia, nisi ex pacto vel nisi sit femineum—tunc succedit filia matri et patri, secundum quosdam succedit nepos ex filio[1] solus et sic usque in infinitum, si feudum sit paternum.[2] Paternum autem voco, quicunque ex superioribus id acquisivit, dummodo scias, quod si quis habens beneficium quatuor superstitibus filiis decedat, et feudum ad unum eorum solum ex divisione perveniat,[3] et iste susceptis[4] filiis duobus vel tribus decedat, qui patrueles dicuntur, et ad unum eorum beneficium ex divisione perveniat, et similiter iste superstitibus filiis decedat, qui patrueles dicuntur,[5] ad quorum unum feudum similiter pervenit, sicut etiam ex aliis superioribus vel primis fratribus supersunt masculi, si ille, qui feudum habet, decesserit,[6] an ad omnes vel ad quos perveniat, quaeritur. Respondeo: ad solos et ad omnes, qui ex illa linea sunt, ex qua iste fuit. Et hoc est, quod dicitur, ad successores[7] pertinere. Isti enim[8] proximiores esse dicuntur respectu aliarum linearum, sed omnibus ex hac linea deficientibus omnes aliae lineae aequaliter vocantur.

## [LF 2.51]
## De capitaneo, qui curiam vendidit, an intelligatur feudum vendidisse

[pr.] Quidam capitaneus in quadam curte sua beneficium militibus dedit, postea curtem[9] vendidit non habita mentione beneficii. Controversia est inter capitaneum et emptorem, emptore dicente, se curiam cum beneficio emisse,

[1] *V2* ex filia. [2] *V2* et sic usque in infinitum; ex latere omnes per masculos descendentes, usque in infinitum, si feudum sit paternum. [3] *V2* deveniat. [4] *V2* superstitibus. [5] *V2 omits* qui patrueles dicuntur. *This aside is absent in all the manuscripts of the intermediate recensions I could read, among which Salz. (f. 61ra), Roma (f. 133ra), Vat1 (f. 266va), Vat2 (f. 28ra).* [6] *V2* decesserit nullo filio relicto. [7] *V2* ad proximiores. [8] *V2* Isti vero. [9] *V2* et postea eandem curiam.

## [LF 2.50]
## Concerning the nature of succession to a fief

The nature of the succession to a fief is such that ascendents do not succeed—e.g., a father to a son. In the descending line, however, a son and not a daughter succeeds the father, unless by an agreement or unless the fief is 'feminine'—then the daughter succeeds the mother and the father. According to some, only a grandson in the male line succeeds, and so on ad infinitum, if the fief is ancestral[1]—I call ancestral a fief that any of the ascendents has acquired—as long as you know that if someone who has a benefice dies with four surviving sons, and the fief comes to only one of them after a partition of the inheritance; and this one dies leaving two or three sons, who are called cousins,[2] and the benefice comes to one of them after a partition; and, likewise, this one dies with sons surviving him,[3] and the fief likewise comes to one of them; and males from the other ascendents or first-mentioned brothers survive too; if he who now has the fief dies [leaving no sons], the question is whether the fief is to come to all or to whom. I answer that [it is to come] only to all who are from that line from which this last one came. And this is what is meant by 'belong to successors';[4] for these ones are said to be the 'closer' [relatives] in respect to the other lines. However, in the absence [of relatives] from this line, all the other lines are equally called [to succeed].

## [LF 2.51]
## On whether a 'capitaneus' who sold a 'curia' is assumed to have sold a fief [located in it]

[pr.] A certain 'capitaneus' granted a benefice to some knights within a 'curtis'[5] of his. He then sold the 'curia' without making mention of the benefice. There is now a dispute between the 'capitaneus' and the purchaser. The purchaser says that he has bought the 'curia' together with the benefice; the lord counters

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[1] *V2* According to some, only the son of a daughter succeeds, and so on ad infinitum; and all the male descendants from the collateral male lines, also ad infinitum, if the fief is ancestral. [2] *This aside could perhaps imply claims possibly laid by uncles, but it is more likely a gloss incorporated in the text in the wrong place. The 'glossa ordinaria' reports this expression as false, suggesting that 'qui dicuntur patrueles', i.e. cousins, refers to the relatives mentioned in the end of the example. This is a plausible explanation of the apparent contradiction between the 'two or three sons' who are each other's brother, and the aside 'who are called cousins'. In V1 the aside also appears in the following sentence, again in correspondence with the mention of 'sons'.* [3] *I have omitted* who are called cousins *following V2 and the manuscript tradition, as explained supra, at page 174, footnote 5.* [4] *V2* 'belong to closer relatives'. [5] *I.e., a signorial district: see Glossary.*

domino vero contra dicente, ad illum[1] beneficium non pertinere. Respondetur, beneficium[2] in venditione non contineri, nisi expressim[3] de eo actum sit.

[§1] Quaesitum scio[4] apud me: si filius vivente patre dominum offenderit ita, quod feudum amitteret, si pater decessisset, utrum feudum amittat vel non. Secundum Stephanum[5] sic, secundum Gerardum,[6] et Obertum similiter.

[§2] Si vasallus voluerit dominum offendere sed non laboraverit, feudum non amittat.[7] Gerardus et Obertus.[8] Etiam si laboraverit, non amittit,[9] nisi insidiatus fuerit[10] et hoc probatum fuerit.

[§3] Similiter si quis investitus fuerit de feudo ita, ut ad feminas transiret, et duas tantum filias reliquerit, quarum una filium habeat et altera filiam, utrum post mortem illarum masculus tantum feudum habere debeat? Secundum Gerardus masculus tantum. Obertus contra. Et e converso, si filios ille habuerit.

[§4] Filius non potest recusare hereditatem patris absque feudo, propinquus autem potest.

[§5] Si contentio fuerit inter filiam et propinquum[11] de hereditate et de feudo, cum filia feudum habere non poterat, quia dicat ipsa 'hoc est de mea hereditate' et ille dicat 'immo de feudo', electio propinqui erit, discernere veritatem iureriurando. Gerardus et Obertus. Similiter si contentio fuerit inter aliquem, qui emisset,[12] et vasallum, quia dicat vasallus 'hoc est de feudo meo', ille autem neget, electio emptoris est, veritatem discernere iureiurando, cum pares curtis veritatem non testantur. Gerardus et Obertus.

[§6] Similiter feudum datum lege commissoria non valet, id est 'si ad certum tempus pecunia non solvatur creditori, ut habeat in feudum'. Gerardus. Secundum Obertus valet. [*V2* 2.51.7] Similiter potest feudum dari ad certum servitium. Gerardus et Obertus.

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[1] *V2* eum. [2] *V2* illud beneficium. [3] *V2* expresse. [4] *V2* Quaesitum est. [5] *V2* secundum istos. [6] *V2* secundum Gerardum non. [7] *V2* non amittit. [8] *V2* et Obertus similiter. [9] *V2* non amittit feudum. [10] *V2* insidiatus ei fuerit. [11] *V2* propinquam. [12] *V2* qui emisset a seniore.

that the benefice does not belong to him. It is answered that the benefice is not included in the sale unless this has been expressly agreed.

[§ 1] I know that it has been asked in my presence: if a son commits an offence against the lord during the life of his father in a way that he would lose the fief if his father had already died, is he to lose the fief or not? According to Stephanus, he is to lose it, and so according to Gerardus and Obertus.[1]

[§ 2] If a vassal wishes to commit an offence against the lord but does not make an effort to do so, he ought not to lose the fief. [According to] Gerardus and Obertus. Even if he makes such an effort, he does not lose it unless he attacks him treacherously, and this is proved.

[§ 3] Similarly, if someone is invested with a fief so that it would pass to women, and he leaves only two daughters, one of whom has a son and the other one has a daughter, ought the male alone to have the fief after their death? According to Gerardus, the male alone ought to have it. Obertus disagrees, conversely, also if the [first-mentioned fief-holder] has [two] sons.[2]

[§ 4] A son cannot disown his father's inheritance without disowning the fief; however, another relative can.

[§ 5] If there is a dispute between a daughter and a male relative [of the deceased] over an inheritance and over a fief, when the daughter was not able to have the fief because she says 'this is from my inheritance', and the relative says 'this is from the fief', the relative has the option to establish the truth through an oath. [According to] Obertus and Gerardus. Similarly, if there is a dispute between someone who has made a purchase[3] and a vassal, because the vassal says 'this is part of my fief', and the other one denies it, the purchaser has the option to establish the truth through an oath when the peers of the court do not testify to the truth. [According to] Gerardus and Obertus.

[§ 6] Similarly, a fief granted by means of a forfeiture clause has no effect—i.e. if money is not paid to the creditor within a fixed time, he should have [the pledged property] in fief, [according to] Gerardus. According to Obertus, it has effect. [*V2* 2.51.7] Similarly, a fief can be given for a specified service, [according to] Gerardus and Obertus.

[1] *V2* According to some he is to lose it, but not according to Gerardus and, similarly, Obertus.
[2] *I.e., two sons one of whom has a son and the other one a daughter.* [3] *V2* who has made a purchase from a lord.

## [LF 2.52]
## De prohibita feudi alienatione per Lotharium

[1]

Lotharius[1] divina favente gratia[2] tertius, Romanorum imperator, pius, felix, inclitus, triumphator[3] et semper Augustus universo populo.

[pr.] Imperialis benevolentiae proprium esse iudicamus, commoda subiectorum investigare et eorum diligenti cura calamitatibus mederi,[4] similiter rei publicae bonum statum ac dignitatem imperii omnibus privatis commodis praeponere.

Quocirca omnium fidelium nostrorum, tam futurorum quam praesentium, noverit universitas, qualiter, dum apud Roncalias secundum antiquorum imperatorum consuetudinem pro iustitia ac pace regni componenda consederemus,[5] omnia, quae ad honorem Romani imperii spectare videntur, sollicite indagantes, perniciosissimam pestem et rei publicae non mediocre detrimentum inferentem resecare proposuimus.

Per multas enim interpellationes ad nos factas didicimus,[6] milites beneficia sua passim distrahere, ac ita omnibus exhaustis suorum seniorum servitia subterfugere, per quod vires imperii maxime attenuatas cognovimus, dum proceres nostri milites suos omnibus beneficiis[7] exutos ad felicissimam nostri nominis expeditionem minime[8] transducere valeant.

Hortatu itaque et consilio archiepiscoporum, episcoporum, ducum, marchionum, comitum palatinorum[9] ceterorumque nobilium, similiter etiam iudicum, hac edictali lege in omne aevum Deo propitio valitura decernimus, nemini licere beneficia, quae a suis senioribus habent, absque ipsorum permissu[10] distrahere vel aliquod commercium adversus tenorem nostrae constitutionis excogitare, per quod imperii vel dominorum minuatur utilitas.

[§1] Si quis vero contra huius saluberrimae nostrae legis praecepta[11] ad huiusmodi illicitum commercium accesserit vel aliquid in fraudem huius legis machinari temptaverit, pretio ac beneficio se cariturum agnoscat. Notarium vero, qui super hoc tali contractu libellum vel aliud instrumentum conscripserit, post amissionem officii infamiae periculum sustinere sancimus.[12]

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[1] *MGH, Constitutiones*, i, 175–176 (n. 210) [2] *V2* clementia. [3] *V2* victor ac triumphator. [4] *V2* et eorum calamitatibus diligente cura mederi. [5] *V2* consideremus. [6] *V2* comperimus *for* didicimus. [7] *V2* beneficiis suis. [8] *V2* nullo modo *for* minime. [9] *V2* comitum, marchionum, palatinorum. [10] *V2* sine ipsorum permissione. [11] *V2* contra haec nostrae legis saluberrimae praecepta. [12] *V2 adds* Dat. VII. die mensis novembr. MCXXXVI, indict. XV.

## [LF 2.52]
## Concerning the alienation of a fief, prohibited by [Emperor] Lothair

[1]

Lothair the Third, by the favour of divine grace emperor of the Romans, the pious, blessed, illustrious, triumphant, and ever august, to all the people.

[pr.] We judge that it is fitting for the imperial benevolence to investigate the conveniences of the subjects and, with diligent care, put a remedy to their misfortunes, and, at the same time, to place the good condition of the commonwealth and the honour of the Empire before any individual convenience.

Therefore, the entirety of our loyal subjects, both future and present, shall know how, while we were holding court at Roncaglia, according to the custom of ancient emperors, to set in order the justice and peace of the realm,[1] carefully examining all that is seen to pertain to the honour of the Roman Empire, we have sought to put an end to a most dangerous plague which causes considerable damage to the commonwealth.

For, through many requests that have been made to us, we learned that, in many places, knights sell their benefices and so, having exhausted them all, they withdraw from serving their lords. We came to know that, as a result of this, the imperial forces have been significantly weakened, now that our noblemen are not able to bring their knights, stripped of all their benefices, to our most felicitous expedition.

Therefore, with the exhortation and counsel of archbishops, bishops, dukes, marquesses, counts palatine, noblemen, and also judges, by this edict, with God's favour to be forever valid, we decree that no one is permitted to sell the benefices they hold from their lords without their permission. Nor [are they permitted] to devise any transaction contrary to the dispositions of our constitution, through which the benefit of the empire or their lords would be diminished.

[§1] However, if anyone, contrary to the provisions of this most beneficial law of ours, undertakes such an illicit transaction, or attempts to contrive anything in deceit of this law, he is to know that he shall be deprived of both the price [of the transaction] and the benefice. We also establish that the notary who draws up a charter or another instrument concerning an agreement of such kind, after losing his office shall sustain the risk of infamy.[2]

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[1] *V2* shall know how, at Roncaglia, according to the custom of ancient emperors, we considered the arrangements to be made for the justice and peace of the realm. [2] *V2 adds* Given the seventh of November 1136, in the fifteenth indiction.

[2]

Imperator[1] Lotharius Aug(ustus) etc. universo populo.

Satis bene dispositum ad utilitatem regni et ad perniciosam pestem destruendam in scriptis inserere curavimus. Quidam miles bina beneficia a duobus dominis, prout solitum est, acquisivit. Qui decedens duos reliquit filios, qui paterna beneficia inter se dividentes alter eorum suo domino pro beneficio, quod ad eum pervenit, fidelitatem nullo anteposito, sicut pater fecerat, fecit, alter vero frater alteri domino suo similiter pro suo beneficio,[2] quia nullum alium dominum habere videbatur, nullo anteposito fidelitatem fecit. Defuncto posteriore fratre sine filiis, utique feudum in unam, ut prius, venit personam et sic dominus posterior[3] talem fidelitatem quaerit, qualem frater eius fecerat. [*V2* 2.52.2.1] Quas amputantes altercationes sancimus, quod frater fecit, scilicet in dando simpliciter,[4] nihil superstiti obesse, licet in secundam et tertiam generationem et usque in infinitum pervenerit, si hoc actum erit.[5]

[3]

Imperator[6] Lotharius etc. Eugenio Papae et universo populo.

Quoniam inter dominum et vasallum nulla fraus nec quodvis[7] malum ingenium debet intervenire, idcirco per hanc praesentem legem sancimus, si vasallus non dolose per annum et diem steterit, quod a domino sui beneficii investituram non acceperit vel petierit,[8] feudum non ob hoc amittat. Dolus enim abesse videtur, si iusta causa impediente steterit. Dat. .VI. Kal. Sept. anno a nativitate Domini .MCXXVII., indictione .V.

1 *MGH, Constitutiones*, i, 680 (n. 453). *The text is nearly identical to Appendix 1, ch. 21.* 2 *V2* pro suo beneficio alteri domino suo similiter. 3 *V2 omits* posterior. 4 *V2 omits* scilicet in dando simpliciter. 5 *V2 omits* si hoc actum erit. 6 *MGH, Constitutiones*, i, 679–680 (n. 452). *The text of this title is largely the same as the one in Appendix 1, ch. 25. In 1127, the date of this document, the pope was Honorius II and not Eugenius III, who was elected only in 1145; Lothair III died in 1137. Therefore, the name of either the emperor or the pope—if not both—must be incorrect. Note that there is another spurious correspondence between an Emperor Lothair and a Pope Eugenius in LF 1.18.* 7 *V2* ullum *for* quodvis. 8 *V2* investituram non petierit.

[2]

The august Emperor Lothair to all the people.

We have taken particular care to put into writing a disposition for the benefit of the realm and the destruction of a pernicious plague. A certain knight acquired two benefices from two lords, in the accustomed way. When he died, he left two sons who divided between themselves their father's benefices. One of them did fealty to his lord for the benefice that came to him acknowledging no superior lord, just as his father had done. The other brother, moreover, did fealty to the other lord for his benefice in a similar way, acknowledging no superior lord, since he was supposed to have no other lord. The latter brother having died without sons, the fief, of course, came to one person, as before,[1] and so the latter's lord seeks [from the other brother] the same fealty as his brother had done. [*V2* 2.52.2.1] To cut off these altercations, we establish that what one brother did, i.e. with a general stipulation 'in dando',[2] should in no circumstance stand in the way of the surviving one, even though [the fief] comes to a second or a third generation, and so on, ad infinitum, if this has been agreed.

[3]

Emperor Lothair etc. to Pope Eugenius and all the people.

Since no deceit nor any malicious trickery ought to come between a lord and a vassal, therefore, through this present decree, we establish that if a vassal remains with no fraudulent intent for a year and a day without receiving or seeking investiture of his benefice from the lord, he is not to lose the fief for this. Because there appears to be no deceit if he so remains as a result of the impediment of a legitimate cause. Given on the sixth day of the Kalends of September ⟨27 August⟩, in the year 1127 from the Nativity of the Lord, in the fifth indiction.

[1] *See Appendix 1, ch. 21:* both fiefs came to only one person, as before. [2] *This aside, absent from Appendix 1, ch. 21, seems to equate a vassal's oath of fealty with the verbal stipulation 'in dando'* (*Dig. 45.1.2*), *which according to Roman law implies the conveyance of real rights. On verbal agreements stipulated 'simpliciter', see for instance Dig. 45.3.17–18, hence 'simpliciter' means 'without the imposition of specific limitations or clauses'.*

## [LF 2.53]
## De pace iuramento firmanda, servanda, tuenda et vindicanda et de poena iudicibus apposita, qui eam vindicare et iustitiam facere neglexerint[1]

Fridericus, Dei gratia Romanorum imperator, semper Augustus universis suo subiectis imperio salutem.

[pr.] Hac edictali lege in perpetuum valitura iubemus, ut omnes nostro subiecti imperio veram et perpetuam pacem inter se observent, et ut inviolata perpetuo inter omnes servetur.[2] Duces, marchiones, comites, capitanei, valvassores et omnium locorum rectores cum omnibus locorum primatibus et plebeiis a decimo octavo anno usque ad septuagesimum iureiurando adstringantur,[3] ut pacem teneant et rectores locorum adiuvent in pace tenenda atque vindicanda, et in fine cuiuscunque[4] quinquennii de praedicta pace tenenda omnium sacramenta renoventur. Si quis vero aliquod ius de quacumque re vel facto contra aliquem se habere putaverit, iudicialem adeat potestatem et per eam sibi ius competens exequatur.

[§ 1] Si quis vero temerario ausu praedictam pacem violare praesumpserit, si civitas est, poena centum librarum auri camerae nostrae inferenda puniatur, oppidum vero viginti libris auri mulctetur, duces autem, marchiones et comites quinquaginta libras auri praestent, capitanei quoque et maiores valvassores viginti libris auri puniantur, minores vero valvasores et omnes alii praedictae pacis violatores tres libras auri inferre cogantur et damnum passo secundum leges resarciant.

[§ 2] Iniuria seu furtum legitime puniatur.

[§ 3] Homicidium quoque et membrorum diminutio vel aliud quodlibet delictum legaliter vindicetur.

[§ 4] Iudices vero et locorum defensores, vel quicumque magistratus ab imperatore vel eius voluntate constituti seu confirmati, qui iusticiam facere neglexerint, et pacem violatam vindicare legitime supersederint, damnum omne iniuriam passo resarcire compellantur, et insuper, si maior iudex est, sacro aerario poenam decem librarum auri praestet, minor autem poena trium librarum auri mulctetur.

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[1] *V2* De pace tenenda inter subditos, et iuramento firmanda, et vindicanda, et de poena iudicibus apposita, qui eam vindicare et iustitiam facere neglexerint. *MGH, Constitutiones*, i, 245–247 (n. 176); *MGH, Friderici I. Diplomata*, ii, 32–34 (n. 241): November 1158, Roncaglia. [2] *V2* ut inviolata inter omnes perpetuo observetur. [3] *V2* obstringantur iuramento *for* iureiurando adstringantur. [4] *V2* uniuscuiusque.

### [LF 2.53]
### Concerning the peace to be strengthened by oath, maintained, guarded, and enforced; and concerning the penalty applied to judges who fail to enforce it and do justice

Frederick by the grace of God emperor of the Romans, the ever august, greets all the subjects of his imperial authority.

[pr.] By this edict, to be forever valid, we command that all subject to our imperial authority observe true and perpetual peace among themselves and that [peace] be preserved inviolate perpetually among everyone. Dukes, marquesses, counts, 'capitanei', 'valvasores', and all local governors, with all the magnates and commoners of all places between eighteen and seventy years of age, are to be obliged to swear that they will keep the peace and help local governors to keep and enforce the peace. Moreover, at the end of each five-year period, all the oaths concerning the keeping of this peace are to be renewed. If, however, anyone believes he has any rightful claim against anyone in respect of any thing or deed, he may go to the judicial power, and through it pursue the right belonging to him.

[§ 1] However, if anyone, with reckless daring, presumes to violate the aforesaid peace, if it is a city, it is to be punished with a penalty of one hundred pounds of gold, to be paid to our treasury. But a town is to be fined twenty pounds of gold. Dukes, marquesses, and counts are to disburse fifty pounds of gold. 'Capitanei' and greater 'valvasores' are to be punished twenty pounds of gold, while lesser 'valvasores' and all other violators of the aforesaid peace are to be obliged to pay three pounds of gold and restore any damage to the one who has suffered it, according to the laws.

[§ 2] Injury and theft are to be punished according to law.

[§ 3] Homicide and mutilation of limbs, or any other felony, also are to be lawfully punished.

[§ 4] Judges, however, and local officials or any magistrate appointed or confirmed by the emperor or with his consent, who neglect to do justice and refrain from avenging the violation of peace according to law, are to be compelled to restore any damage to him who suffered it. Furthermore, if he is a higher judge, he is to pay to the imperial treasury a penalty of ten pounds of gold; a lower judge, on the other hand, is to be fined with a penalty of three pounds of gold.

[§ 5] Qui vero ad praedictam poenam persolvendam inopia dignoscitur laborare, corporis sui coërcitionem cum verberibus patiatur, et procul ab eo loco, quem inhabitat, quinquaginta miliaria per quinquennium vitam agat.

[§ 6] Conventiculas[1] quoque omnesque coniurationes, in civitatibus et extra, etiam occasione parentelae, et inter civitatem et civitatem et inter personam et personam sive inter civitatem et personam, omnibus modis fieri prohibemus, et in praeteritum factas cassamus, singulis coniuratorum poena unius librae auri puniendis.

[§ 7] Episcopos quoque[2] locorum ecclesiastica censura violatores huius sanctionis, donec ad satisfactionem veniant, coërcere volumus.

[§ 8] Receptatoribus etiam malefactorum, qui praedictam pacem violaverint, et praedam ementibus nostrae indignationi subituris et eisdem poenis feriendis. Praeterea bona eius publicentur et domus eius destruatur. Qui pacem iurare et tenere noluerit, et lege pacis non fruatur.

[§ 9] Illicitas etiam exactiones, et[3] maxime ab ecclesiis, quarum abusus iam per longa tempora inolevit, per civitates et castella omnino condemnamus et prohibemus, et, si factae fuerint, in duplum reddantur.

[§ 10] Item sacramenta puberum sponte facta super contractibus rerum suarum non retractandis inviolabiliter custodiantur. Per vim autem et iustum metum etiam a maioribus, maxime, ne quaerimoniam maleficiorum commissorum faciant, extorta sacramenta nullius esse momenti iubemus.

[§ 11] [*V2* 2.54pr.][4] Ad hoc, qui allodium suum vendiderit, districtum et iurisdictionem imperatoris vendere non praesumat, et, si fiat, non valeat.

[§ 12] [*V2* 2.54.1] Si vero contigerit, allodium aliquod etiam infeudatum conferri ecclesiae vel per oblationem fidelium vel per emptionis et venditionis alteriusve huiusmodi contractum, infeudatus, nisi per gratiam ecclesiae tanquam de novo receperit, feudum, quod habebat, retinere non poterit.

[§ 13] [*V2* 2.54.2][5] Ut autem aequitas, quae in paribus causis paria iura desiderat,[6] per universitatem totius imperii servetur, firmiter statuimus tam in Italia quam in Alamannia, ut, quicunque indicta publica expeditione[7] ad suscipiendam imperii coronam regem aut sub rege dominum suum non adiuverit aut eundo cum ipso aut pro quantitate feudi stipendia militiae persolvendo,

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[1] *V2* Conventicula. [2] *V2* Episcopus vero. [3] *V2 omits* et. [4] *V2 has §§ 11–13 as a separate rubric* [*2.54*] De allodiis. [5] *This paragraph presents similarities with V1* LF *2.54.3.* [6] *See Cic., Topica,* 4,23. [7] *V2 adds* Romam.

[§ 5] However, he who is acknowledged to be unable to pay the aforesaid penalty for his poverty is to endure corporal chastisement with lashes and for five years spend his life fifty miles away from the place where he resides.

[§ 6] We also forbid that conventicles and all sworn associations, within and outside cities, be made in any way—even on the pretence of kinship—whether between city and city, between person and person, or between city and person. We also dissolve the ones formed in the past, punishing each sworn member with a penalty of one pound of gold.

[§ 7] We wish that also local bishops punish through ecclesiastical censure the violators of this ordinance until they come to make amends.

[§ 8] They who harbour criminals who have violated the aforesaid peace, and they who buy stolen goods, shall also incur our indignation and be struck with the same penalties. Furthermore, goods shall be confiscated and the house destroyed of him who refuses to swear and keep the peace, and he is not to benefit from the peace decree.

[§ 9] We also utterly condemn and forbid the unlawful exactions [collected] by cities and towns, especially from churches, the abuse of which has been growing for a long time already. And if they have been collected, they are to be paid back twofold.

[§ 10] Further, oaths voluntarily taken by minors not to revoke contracts concerning their property are to be inviolably observed. However, we command that the oaths that have been extorted, even from adults, by force or justified fear, have no force, especially [when this is done] so that they make no complaint about some committed crime.

[§ 11] [*V2* 2.54pr.][1] On the same matter, he who sells his allodial property is not to presume to sell the emperor's power of distraint and jurisdiction, and if this is done, it is to have no effect.

[§ 12] [*V2* 2.54.1] If, however, it happens that some allod which is also enfeoffed is transferred to a church either through an offering of the faithful, or on a purchase-and-sale agreement, or through another agreement of this kind, the fief-holder cannot retain the fief he had unless he receives it as it were anew, by the grace of that church.

[§ 13] [*V2* 2.54.2] So that equity, which in similar cases requires similar rights, be preserved throughout the whole of the empire, we firmly establish, both in Italy and in Germany, that, once a public expedition to take the imperial crown has been announced, anyone who does not assist the king, or his lord in the king's service, by either joining him or making payments in lieu of military ser-

[1] *V2 has §§ 11–13 as a separate rubric [2.54]* Concerning allods.

si de vocatione legitima a domino suo convinci per compares suos poterit, feudum perdit[1] et dominus in suos usus illud redigendi habeat liberam facultatem.

## [LF 2.54]
## [*V2* 2.55] De prohibita feudi alienatione per Fredericum[2]

Idem Augustus universo populo.

[pr.] Imperialem decet sollertiam ita rei publicae curam gerere et subiectorum commoda investigare, ut regni utilitas incorrupta persistat et singulorum status iugiter servetur illaesus. Quapropter dum ex praedecessorum nostrorum more universalis curiae Roncaliae pro tribunali sederemus, a principibus Italicis, tam rectoribus ecclesiarum, quam aliis fidelibus regni non modicas accepimus quaerelas, quod beneficia eorum et feuda, quae vasalli ab eis tenebant,[3] sine dominorum licentia pignori obligaverant, et quadam collusione nomine libelli vendiderant, unde debita servitia amittebantur et honor imperii et nostrae felicis expeditionis complementum minuebatur.

Habito ergo consilio episcoporum, ducum, marchionum, et comitum, simul etiam palatinorum iudicum, et aliorum procerum, hac edictali, Deo propitio, perpetuo valitura lege sancimus, ut nulli liceat feudum totum vel partem aliquam vendere, vel pignorare, vel quoqunque modo alienare,[4] vel pro anima iudicare sine permissione illius domini, ad quem feudum spectare dignoscitur.

Unde imperator Lotharius tantum in futurum cavens ne fieret, legem promulgavit. Nos autem ad pleniorem regni utilitatem providentes, non solum in posterum sed etiam huiusmodi alienationes illicitas hactenus perpetratas hac praesenti sanctione cassamus, et in irritum deducimus, nullius temporis praescriptione impediente, quia, quod ab initio iure[5] non valuit, tractu temporis convalescere non debet,[6] emptori bonae fidei ex empto actione de pretio contra venditorem competente.

[1] *V2* perdat. [2] *MGH, Constitutiones*, i, 247–249 (n. 177); *MGH, Friderici I. Diplomata*, ii, 34–36 (n. 242): November 1158, Roncaglia. *V2* Fredericus Dei gratia Romanorum Imperator semper Augustus universo populo. [3] *V2* quod beneficiati eorum feuda, quae ab eis tenebant. [4] *V2* distrahere seu alienare. [5] *V2* de iure. [6] *See Dig. 50.17.29: 'Quod initio vitiosum est, non potest tractu temporis convalescere'.*

vice according to the size of his fief, if he is found guilty through his compeers concerning his lord's lawful summons, loses the fief, and the lord is to have the unrestricted capacity to recover it for his own uses.

### [LF 2.54]
### [*V2 2.55*] Concerning alienation of a fief, prohibited by Frederick [I]

The same, august [Emperor Frederick I] to all the people.[1]

[pr.] It befits the imperial judiciousness to exercise care over the commonwealth and investigate the conveniences of the subjects in such a way that the benefit of the realm remain unaffected and the status of individuals be preserved unharmed. Therefore, while, according to the practice of our predecessors, we were presiding over a general court at Roncaglia to administer justice, we received not a few complaints from the Italian princes—both leaders of churches and other faithful men of the realm—that the vassals who held their benefices and fiefs from them, without their lords' permission, had tied them in pledge[2] or sold them, by some collusion, on the pretence of a lease. Hence, the services due were lost, and the honour of the empire and the support for our felicitous expedition diminished.

Having therefore received counsel from bishops, dukes, marquesses, and counts, together with palatine judges and other noblemen, by this edict, with God's favour to be forever valid, we establish that no one is to be permitted to sell his entire fief or any portion of it, or tie it in pledge, or alienate it in any way, or bestow it for the salvation of the soul, without the permission of that lord to whom the fief is known to belong.

Hence Emperor Lothair promulgated a law to prevent this solely in the future. We, on our part, providing for a greater benefit to the realm, by this present disposition annul and deprive of validity illicit alienations of this kind perpetrated not only in the future but also in the past, notwithstanding any [long-]time prescription,[3] for what was not valid by law at the beginning, ought not to become valid with the passage of time—and he who purchased in good faith is entitled to a legal action against the seller to recover the price.

[1] *V2* Frederick, by the Grace of God ever august emperor of the Romans, to all the people. [2] *V2* that their fief-holders, without their lord's consent, had tied up in pledge the fiefs they held from them. [3] *On 'praescriptio', see Glossary.*

[§ 1] Callidis insuper machinationibus quorumdam obviantes, qui pretio accepto, quasi sub colore investiturae, quam sibi licere dicunt, feuda[1] vendunt, et in alios transferunt, ne tale figmentum vel aliud ulterius in fraudem huius nostrae constitutionis excogitetur, modis omnibus prohibemus, poena auctoritate nostra imminente, ut venditor et emptor, qui tam illicitas alienationes reperti fuerint contraxisse, feudum amittant, et ad dominum libere revertatur. Scriba vero, qui super hoc instrumentum sciens conscripserit, post amissionem officii cum infamiae periculo manum amittat.[2]

[§ 2] Praeterea, si quis infeudatus maior quatuordecim annis, sua incuria vel negligentia per annum et diem steterit, quod feudi investituram a proprio domino non petierit, transacto hoc spatio, feudum amittat, et[3] ad dominum redeat.

[§ 3] Firmiter etiam statuimus tam in Italia, quam in Alamannia, ut, quicunque indicta publica expeditione vocatus a domino suo, in eandem expeditionem spatio competenti[4] temere venire supersederit, vel alium pro se domino acceptabilem mittere contempserit, vel dimidium redditus feudi unius anni domino non subministraverit, feudum, quod ab episcopo vel ab alio domino habuit, amittat, et dominus feudi in usus suos illud redigendi omnibus modis habeat facultatem.

[§ 4] Praeterea ducatus, marchia, comitatus de cetero non dividatur, aliud autem feudum, si consortes voluerint, dividatur ita, ut omnes, qui partem feudi habent iam divisi, vel dividendi, fidelitatem faciant, ita tamen, ut vasallus pro uno feudo plures dominos habere non compellatur, nec dominus feudum sine voluntate vasalli ad alium transferat.

[§ 5] Insuper si filius vasalli dominum offenderit, pater a domino requisitus deducat filium ad satisfaciendum domino, vel a se filium separet, alioquin feudo privetur. Sin autem[5] pater vult eum deducere, ut satisfaciat, et filius contemnit, patre mortuo in feudum non succedat, nisi prius satisfecerit domino, parique modo vasallus pro omnibus suis domesticis faciat.

[§ 6] Illud quoque praecipimus, ut, si vasallus de feudo suo alium vasallum habuerit, et vasallus vasalli dominum domini sui offenderit, nisi pro servitio alterius domini sui hoc fecerit, quem sine fraude ante habuit,[6] feudo suo privetur, et ad dominum suum, a quo ipse tenebat, revertatur, nisi requisitus ab eo paratus fuerit satisfacere maiori domino, quem offenderit, et nisi vasallus idem-

[1] *V2* feudum. [2] *V2* amittit. [3] *V2* et feudum. [4] *V2* competente. [5] *V2* Si autem. [6] *V2* habuerit.

[§ 1] Furthermore, to oppose the cunning machinations of some who, having received a payment, sell and transfer fiefs to others under the form of investiture, which they say is permitted to them, we forbid by all means that such pretence or any further action be contrived in deceit of this constitution. The penalty, set by our authority, is that the seller and the purchaser who are found to have contracted such illicit alienations are to lose the fief, which is to freely revert to the lord. Moreover, a scribe who wittingly draws up an instrument concerning this, after losing his office is, at the risk of infamy, to lose his hand.

[§ 2] Moreover, if any fief-holder older than fourteen by his own carelessness or negligence remains for a year and a day without seeking investiture of the fief from his own lord, he is to lose the fief once this period has passed, and it is to return to the lord.

[§ 3] We also firmly establish, both in Italy and Germany, that, once a public expedition has been announced, anyone who has been summoned by his lord and recklessly refrains from setting out for that expedition within an appropriate period, or refuses to send a suitable substitute to his lord, or does not provide his lord with half the annual income of his fief, is to lose the fief he has from a bishop or another lord. Moreover, the lord of the fief is to have the capacity to recover it in any way for his own uses.

[§ 4] Moreover, a duchy, march, or county is not to be henceforth divided. But any other fief, if the coheirs agree, may be divided so that all who have a portion of the fief, whether divided or to be divided, are to do fealty; nonetheless, [it may be divided] in such a way that a vassal is not to be compelled to have more lords for one fief, and a lord is not to transfer a fief to another without the vassal's consent.

[§ 5] Furthermore, if the son of a vassal commits an offence against the lord, at the lord's request his father is to either bring his son to make satisfaction to the lord or send his son away from him; otherwise he is to be deprived of the fief. If, however, the father wants to bring him to make satisfaction, and the son refuses, once his father has died, he is not to succeed to the fief unless he first makes satisfaction to the lord. A vassal is to deal with all his household servants in the same manner.

[§ 6] We also command this. If a vassal has another vassal in respect to his fief, and the vassal's vassal commits an offence against the lord of his lord, he is to be deprived of his fief, unless he does so while serving another lord of his, whom he had previously without fraud. And the fief is to revert to his lord, from whom he held it, unless, once required, he is willing to make satisfaction to the higher lord against whom he committed an offence. Moreover, the vassal who is also lord, is to lose his fief if, when required by his lord,

que dominus, a domino suo requisitus, eum, qui maiorem dominum offenderit, requisierit[1] ut satisfaciat, suum feudum amittat.

[§ 7] Praeterea, si inter duos vasallos de feudo sit controversia, domini sit cognitio, et per eum controversia terminetur. Si vero inter dominum et vassallum lis oriatur, per pares curiae, a domino sub fidelitatis debito coniuratos, terminetur.

[§ 8] Illud quoque sancimus, ut in omni sacramento fidelitatis imperator nominatim excipiatur.

### [LF 2.55]
### [*V2* 2.56] Quae sint regaliae[2]

Imp(erator) Fridericus.

Regalia sunt arimanniae,[3] viae publicae, flumina navigabilia, et ex quibus fiunt navigabilia, portus, ripatica, vectigalia, que vulgo dicuntur thelonea,[4] monetae,[5] mulctarum poenarumque compendia, bona vacantia, et quae indignis[6] legibus auferuntur, nisi quae specialiter quibusdam conceduntur, et bona contrahentium incestas nuptias, condemnatorum,[7] et proscriptorum, secundum quod in novis constitutionibus cavetur[,] angariarum, parangariarumque et plaustrorum, et navium praestationes, et extraordinaria collatio ad felicissimam regalis numinis expeditionem, potestas constituendorum magistratuum ad iustitiam expediendam, argentariae et palatia in civitatibus consuetis, piscationum redditus et salinarum, et bona committentium crimen maiestatis, et dimidium thesauri in loco Caesaris inventi[8] vel loco religiosi: si data opera totum ad eum pertineat.[9]

[1] *V2* requirat. [2] *MGH, Constitutiones*, i, 244–245 (n. 175); *MGH, Friderici I. Diplomata*, ii, 27–29 (n. 237): November 1158, Roncaglia. [3] *V2* arimandiae. [4] *V2* telonia. [5] *V2* moneta. [6] *V2* et quae, ut ab indignis. [7] *V2* damnatorum. [8] *V2* inventi non data opera. [9] *See Inst. 2.1.39*.

he does not require the one who committed an offence against the higher lord to make satisfaction.[1]

[§ 7] Moreover, if there is a dispute over a fief between two vassals, the lord is to take cognisance of it, and the dispute is to be determined by him. If, however, litigation arises between a lord and a vassal, it is to be determined by the peers of the court, who are jointly sworn in by the lord under obligation of fealty.

[§ 8] We also establish that in every oath of fealty, the emperor should be expressly excepted.

## [LF 2.55]
## [*V2* 2.56] What regalian rights are

Emperor Frederick [I].

Regalian rights are: 'arimanniae' [i.e., jurisdiction over free men];[2] public roads; navigable rivers and [rivers] that can be made navigable; harbours; shore dues; trade dues commonly called 'tolls'; coinage; profits from fines and penalties; vacant goods, and those which have been legally taken away from the unworthy, unless they have been specifically granted to someone; the goods of those who contracted incestuous marriages, of those convicted, and of outlaws, in accordance with what is specified in the novel constitutions;[3] [the requisition of] services concerning regular and extraordinary transport, carriages, and ships; extraordinary taxation for the most felicitous expedition of his royal majesty; the power to appoint magistrates for the administration of justice; silver mines and public palaces, in the cities where it is customary; revenues from fisheries and saltpans; the goods of those who commit the crime of lese majesty; half of the treasure that is found[4] on public or ecclesiastical land—the treasure is to belong to [the emperor] entirely, if he has made effort [in finding it].

[1] *In the translation I have maintained the terminological inconsistencies concerning the actors of this chapter—i.e. the first vassal who sub-enfeoffs his fief appears as 'vasallus', 'dominus' of the sub-holder, and 'vasallus idemque dominus'. To facilitate the reading, however, I believe it useful to provide a clarification of the chapter's content: A is the higher lord; B is his fief-holder, who has enfeoffed his fief to C, the vassal's vassal, or sub-holder. If C commits an offence against A, with whom has no direct bond, he is to lose the fief, which ought to revert to B. But if C, by B's request, is willing to make satisfaction to A, he shall keep the fief. However, B also loses the fief if he refuses to require C to make satisfaction when commanded by A to do so.*

[2] *For 'arimanniae', see Glossary.*

[3] *I.e., Nov. 12.1–2; 134.13.2–3.*

[4] *V2* that is found without effort being made.

### [LF 2.56]
### [*V2* 2.57] Quot testes sint necessarii ad probandam feudi ingratitudinem[1]

Imp(erator) Henricus Aug(ustus) universo populo.

Si vasallus inhonestis factis, atque indecentibus machinationibus dominum suum offenderit, insidiisque eum clandestinis vel manifestis appetiverit, vel inimicis eius suas amicitias copulaverit, atque in aliis sic versatus est, ut potius inimicus quam fidelis esse credatur, vel si eum cucurbitaverit, seu in campestri bello suum dominum reliquerit, feudo privabitur. Quod non obtinere sancimus, nisi quinque testibus summae atque integrae opinionis probatum fuerit manifeste. Datum viii. Idus Augusti feliciter.

### [LF 2.57]
### [*V2* 2.58] De notis feudorum

[pr.] Notandum est in feudo, quod de caneva seu de camera datur,[2] non debere dari, nisi sit de caneva vel de camera,[3] unde solvi possit, vel si ita evacuata sit caneva[4] sine culpa promissoris, exspectandum est, donec iterum de caneva[5] vel de camera solvi possit.[6] Dominum autem feudum[7] dare posse intelligitur omni aere alieno soluto.[8] Non enim aequum est, quem[9] videre egentem, quem prius habuit in coniugem.[10]

[§ 1] Quod autem pares tantum debeant interesse investiturae feudi et non alii, hoc tunc verum est, cum dominus vasallos alios habuerit. Alioquin adhibeat dominus, quos meliores potuerit,[11] liberos tamen, argumentatione[12] legis de ultimis voluntatibus in Lombarda,[13] quae dicit:[14] 'Si quis donationem facere voluerit de suis rebus alicui vel investituram, adhibeat sibi de pagensibus suis,

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[1] *MGH, Constitutiones*, i, 103–104 (n. 55): *1047 or 1054, where the constitution is defined 'dubious': although cautiously attributed to Emperor Henry III, the editor ascribes it to Henry VI* (*1196*). [2] *V2* quod de cavena seu camera dicitur. [3] *V2* nisi cum sit in camera vel cavena. [4] *V2* cavena. [5] *V2* cavena. [6] *V2* dari possit. [7] *V2* feudi. [8] *V2* omni aere alieno deducto. [9] *V2* eum. [10] *V2 adds* vel amicum. *The passage is from Dig. 42.1.19.1.* [11] *V2* poterit. [12] *V2* argumento. [13] *Lomb. 2.18.7.* [14] *V2* in Lombarda, scilicet illa quae dicit.

### [LF 2.56]
### [*V2* 2.57] How many witnesses are necessary to prove ingratitude for a fief

The august Emperor Henry to all the people.

If a vassal commits an offence against his lord with disloyal acts and unfitting machinations, or assails him with covert or overt attacks, or joins in friendship with his enemies, or behaves in other respects so as to be seen as his enemy rather than his loyal man, or if he cuckolds him, or deserts his lord on a battlefield, he shall be deprived of the fief. We establish that this does not hold if it has not been manifestly proved by five witnesses of highest and uncorrupted reputation. Given on the eighth day of the Ides of August <8 August>, with good auspices.

### [LF 2.57]
### [*V2* 2.58] Concerning some notes on fiefs[1]

[pr.] It should be noted, in respect to a fief that is given out of the incomes of a warehouse ('caneva') or treasury ('camera'), that it ought not to be given unless in the warehouse or treasury there is [means] to pay it. Otherwise, if the warehouse has been emptied through no fault of the one who promised [to pay], one must wait until [the sum] can be given again out of the warehouse or treasury: however, it is assumed that a lord can give [such a] fief only after his debts [to third parties] have been paid,[2] for it is not fair to see in poverty a person whom one has previously had as a loved one [and a friend].[3]

[§1] That only peers ought to be present at a feudal investiture, and not others, is only true when the lord has other vassals. Otherwise, the lord is to summon the best men he can, provided they are free, according to the argument drawn from the title 'Concerning last wills' in the Lombarda, which says: 'If anyone wants to make a donation or an investiture to someone out of his property, he is to summon two or three suitable witnesses among his neigh-

[1] De notis feudorum *might refer to 'notes concerning fiefs', i.e. glosses or commentaries, but also to the 'characteristics of fiefs'. The 'glossa ordinaria' suggests the first option, which we follow.* [2] *V2* have been deducted. [3] *The meaning of the second part of the title is that a lord should not be obliged to pay what he promised immediately when the amount is available in the warehouse or treasury, but according to what he can pay once his other debts have been paid—if he is indebted. This should be based on the supposedly amicable, almost blood-related relationships between lord and vassal, as the quotation from Paulus* (Dig. 42.1.19.1) *suggests.*

et[1] per eandem legem vivant, testes idoneos duos vel tres'.[2] Pluralis enim elocutio[3] duorum numero contenta est.[4]

[§ 2] Item sciendum est, non esse impedimentum investiturae etsi investituram faciat de re, quam communem dominus habet cum aliquo, quia, si sponte dividere noluerit ille, cum quo habet rem communem, qui investivit, potest cogere per iudicem et ille,[5] qui investitus est, ut dividat. Item heredes eius necesse habent firmam tenere investituram, quam pater fecit. Item eadem lege et eodem iure debet iste habere rem, qui investitus est, quam haberet, qui eum investivit, cum coherede suo, ut[6] adaequatio percurrat usque ad quadraginta annos. Item investitura per se et per suum nuntium dari et accipi potest. Quae omnia supradicta colligi possunt per supradictas leges Longobard. tit. De ultimis voluntatibus l. Si quis,[7] et C. communi dividundo l. i. et ii.[8]

[§ 3][9] Idcirco pares sunt necessarii in instrumento investiturae et non alii, ne quid excogitetur falsitatis in perniciem domini aliis testibus inductis, corruptis forte pecunia vel odio vel gratia, quae non sunt suspicanda in paribus.

[§ 4] [*V2* 2.58.3] Si instrumentum diceretur[10] falsum a domino, daretur[11] defensio vasallo, qui afferret[12] instrumentum, ut in Lombarda, Qualiter quisque se defendere debeat l. de chartis,[13] et auferetur domino, qui veritatem noverit, et iniquum erit, si aliquis ex dono suo conveniatur, cum domini sit defensio ex ordine, cum vasallus non possideat.

[§ 5] [*V2* 2.58.4] Notandum est, quod de omni controversia, quae inter dominum et vasallum oritur, si pares veritatem noverint, omnino cogi debent a domino et paribus, dicere veritatem. Qui si dicant, se nescire, cum sciant, et

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[1] *V2* et qui. [2] *V2* duos testes idoneos, vel tres, [vel plures]. [3] *V2* locutio. [4] *Cit. from Dig. 22.5.12: 'Ubi numerus testium non adicitur, etiam duo sufficient: pluralis enim elocutio duorum numero contenta est'.* [5] *V2 omits* et ille. [6] *V2* scilicet ut. [7] *Lomb. 2.18.7.* [8] *C. 3.37.1–2.* [9] *V2 has this chapter in square brackets as part of 2.58.2.* [10] *V2* dicetur. [11] *V2* datur. [12] *V2* affert. [13] *Lomb. 2.55.32 or 35. Both titles have the same 'incipit' and a very similar content.*

bours, who live under the same law' (Lomb. 2.18.7). For the expression in a plural form [i.e. of 'witnesses'] is satisfied by the number of two.[1]

[§ 2] It should also be known that even if investiture is made out of property that a lord possesses jointly with another, this does not do prejudice to the investiture, because, if the one with whom he who made the investiture possesses the joint property does not wish to divide it of his own accord, even he who has been invested can oblige him, through a judge, to divide it. Also, his heirs[2] need to confirm the investiture that their father has made. Also, he who has been invested ought to hold the property by the same law and by the same right by which he who invested him would hold it together with his coheir[3]—so that an adjustment [of the shares] may be requested within forty years. Also, investiture can be given and received personally or through his representative. All these things can be gathered from the aforesaid Lombard laws under the title 'Concerning last wills', law 'If anyone' (Lomb. 2.18.7), and the Code, under the title 'Concerning the division of property owned in common', laws 1 and 2 (C. 3.37.1–2).

[§ 3][4] Therefore, peers are needed in an instrument of investiture, and not others, lest any falsehood is contrived to the ruin of the lord by the introduction of other witnesses, possibly corrupted by money, hatred, or favour—things that should not to be expected from peers.

[§ 4] [*V2* 2.58.3] Should an instrument [attesting to investiture] be declared false by the lord, defence [by oath] would be given to the vassal who presents the instrument, as in the Lombarda, under the title 'How anyone should defend himself', law 'Concerning charters' (Lomb. 2.55.32 or 35), and taken away from the lord who knows the truth. And it will be unfair that someone is brought to court on account of a gift he made[5] when the vassal is not in possession, since according to ordinary procedure defence [by oath] should be given to the lord.

[§ 5] [*V2* 2.58.4] It should be noted that, in respect to any dispute arising between a lord and a vassal, if some peers know the truth, they ought to be altogether obliged by the lord and other peers to tell the truth. If they declare that they do not know it, while they do know it, and the vassal demands it, the

[1] *This is one of the unreferenced citations of the Digest in* LF *2.57. The author, therefore, writes for an audience that is expected to understand these citations. In this case he draws an argument from Dig. 22.5.12: 'Where the number of witnesses is not specified, even two are sufficient, for the expression in plural form is satisfied by the number two'.* [2] *I.e., of him who made investiture.* [3] *This expression, as well as all the previous text, are derived from Lomb. 2.18.7, quoted in the end of the chapter.* [4] *V2 has this chapter in square brackets as part of V2 2.58.2.* [5] *Perhaps the text implies 'donum investiturae' (see* LF *2.27.8): a gift, or an act, of investiture.*

vasallus postulet, dominus coget eos, iurare et dicere veritatem, ut C. de testibus l. Si quando[1] et in Lombarda tit. De officio iudicis l. Ut iudex unus etc.[2] et in tit. Qualiter quisque se defend. deb. l. Si qualiscunque causa,[3] et tit. De testibus l. Ut quicunque et l. ult.[4]

[§ 6] [*V2* 2.58.5] Cum datur domino defensio de investitura, quae dicitur a se facta, iurare debet, se investituram non fecisse; cum vero datur heredi vel[5] successori eius, iurare debet, se non credere, investituram factam esse ab antecessore suo. Si qua investitura facta esse dicetur, semper debet nominare dominum, a quo investitura facta dicitur, cum multum discrepet sacramentum hereditarium a principali sacramento, ut C. De rebus creditis et iureiurando l. Generaliter,[6] et ut habes de tutore, qui iurat, quod credit et existimat, ut C. de iureiur. calumn. l. ii.;[7] de conscientia enim sua iurare debet, et non de alieno facto—cum iniquum sit,[8] iurare de alieno facto—heres vel successor, nec etiam filius, ut Dig. de rerum amotarum l. Marcellus.[9] Sed contrarium reperitur in Lombarda, quia, licet filius minorem virtutem habeat, quam pater, tamen debet praecise iurare, patrem suum non fuisse debitorem, ut in Lombarda, Qualiter quisque se defendere debet, l. Si contigerit.[10]

[1] *C. 4.20.19.* [2] *Lomb. 2.52.15.* [3] *Lomb. 2.55.14.* [4] *Lomb. 2.51.14, 16.* [5] *V2 omits* heredi vel.
[6] *C. 4.1.12.* [7] *C. 2.58.2.* [8] *V2* cum iniquum sit aliquem. [9] *Dig. 25.2.11.2.* [10] *Lomb. 2.55.7.*

lord shall oblige them to take an oath and tell the truth—as in the Code, under the title 'Concerning witnesses', law 'If when' (C. 4.20.19); and in the Lombarda, under the title 'Concerning the office of a judge', law 'That the judge etc.' (Lomb. 2.52.15); and the title 'How anyone should defend himself', law 'If for any type of cause' (Lomb. 2.55.14); and the title 'Concerning witnesses', law 'That anyone' and the last law [of the same title] (Lomb. 2.51.14, 16).

[§6] [*V2* 2.58.5] When defence [by oath] is given to a lord concerning an investiture which is said to have been made by him, he ought to swear that he did not make that investiture. But when defence [by oath] is given to his heir or successor, he ought to swear that he does not believe that the investiture was made by his predecessor. If one shall say that a certain investiture has been made, he ought always to name the lord by whom he says that investiture has been made. Because the oath of an heir is very different from the oath of a person involved directly, as in the Code, under the title 'Concerning property loaned and the oath', law 'Generally' (C. 4.1.12), just as you have with regard to a guardian, who swears what he believes and considers right, as in the Code, under the title 'Concerning the taking of the oath of calumny', law 2 (C. 2.58.2). Indeed, an heir, a successor, and also a son ought to swear to the best of their knowledge and not with regard to someone else's deed—because it would be unjust to swear with regard to someone else's deed, as in the Digest, under the title 'Concerning the action to recover property which has been removed', law 'Marcellus' (Dig. 25.2.11.2). However, a contrary argument is found in the Lombarda, since although a son's [legal] capacity may be inferior to his father's, he nonetheless ought to swear in precise terms that his father was not indebted, as in the Lombarda, under the title 'How anyone should defend oneself', law 'If it happens' (Lomb. 2.55.7).

APPENDIX 1

# *Capitula Extraordinaria Iacobi de Ardizone*

[1.]
[*V2*: 149.1 De alienatione feudi]

Summopere mandare curamus, ut, si quis aliquem de beneficio investiverit, quod ille, qui investitus fuerit, non potest per proprium vendere nec pro levissima re locare nec infeudare, nisi maiorem partem apud se retinuerit; et si in desperatione filiorum fuerit, nulla ratione nec quolibet modo dare potest. Quae omnia si facta fuerint, nullius momenti erunt, et eo defuncto omnia ad priorem dominum revertuntur; et si dominus conquestus fuerit paribus, pares auditis rationibus intra anni spatium expedire faciant; vasallo non faciente satisdationem domino dent possessionem salvis suis rationibus, nisi diffinitivam promeruerint sententiam.

[2.]
[*V2*: 149.2 De feudis scutiferorum]

Feuda scutiferorum, ut ad libitum dominorum possint adimi, rationis non est, dum tamen serviant secundum laudationem curiae.

[3.]
[*V2*: 149.3 De conditione feudi non impleta]

Ut inter conditionalia et non conditionalia aliqua sit differentia, dicimus, quod, si quis alicui dederit beneficium conditionale, utpote quae dantur propter habitationem, deserta habitatione beneficium amittetur; et etiam cum certo constituuntur servitio, non dato servitio non poterit retineri beneficium.

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APPENDIX 1

# Supplementary chapters by Iacobus de Ardizone

[1.][1]
[*V2*: 149.1 Concerning alienation of a fief]

We take the greatest care to command that, if anyone invests another with a benefice, he who is invested can neither sell it as his own property, nor give it on lease for a trifling rent, nor enfeoff it unless he retains in his hands the greater part of it. Even if he has no hope of having sons, for no reason and in no way may he give it away. If any of these things are done, they shall have no force, and once he has died, everything reverts to the former lord. And if the lord brings a complaint before the peers [of his court], the peers, after hearing the arguments, are to have the matter settled within an interval of one year. If the vassal does not provide security, they are to give possession to the lord without prejudice to his arguments,[2] if they have not [yet] reached a final judgment.

[2.]
[*V2*: 149.2 Concerning the fiefs of squires]

It is not reasonable that the fiefs of squires can be taken away at the lords' will, so long as they render service according to the assessment of the [lord's] court.

[3.]
[*V2*: 149.3 Concerning a fief's condition not being fulfilled]

In order for there to be some difference between conditional and non-conditional [benefices], we say that if anyone gives to another a conditional benefice, such as those that are given on condition of residence, once residence has been abandoned the benefice shall be lost. And, also, when [benefices] are established in return for a fixed service, if that service is not rendered, the benefice cannot be retained.

[1] *V2 maintains these supplementary titles as they appear under titles 149–150 in* Iacobus de Ardizone, *Summa Feudorum*, f. 35^ra^–36^va^. *Title 149 covers what in V1 amounts to chapters 1–25 of the 'capitula extraordinaria' by Ardizone; title 150 covers chapters 26–53.* [2] *I.e., the vassal's.*

[4.]
[*V2*: 149.4 De fidelitate]

Quoniam de fidelitate mentionem fecimus, super ea aliquid summatim dispiciamus.

[§ 1] Si beneficium est sine fidelitate, et vasallus aliquid, quod sit contra suum dominum, fecerit, amittat beneficium laudatione parium. Hoc idem dicimus in iis, qui fidelitatem iurant.

[§ 2] Si cui militi fidelitas requisita fuerit a domino, dominus secundum quosdam librum militi ostendere debet et miles eam facere debet, vel parium laudationi stare intra annum. Quod nisi factum fuerit, miles secundum quosdam de beneficio damnari potest, quod contra praeceptum domini Lotharii regis Papiae datum videtur.[1] Librum autem, quod vasallo ostendi soleat, non necessitate fieri, sed voluntate. Est enim quoddam signum requisitae fidelitatis memoriae causa.

[§ 3] Et venit aliquando, ut vasallus dicat, domino se facturum fidelitatem, quam pares laudaverunt. Tunc non perdit beneficium, si stat per dominum, quod faciat curiam.

[§ 4] Qui fidelitatem iurant, si voluntate utrorumque separatio facta fuerit, fidelitas finitur: si sua voluntate vasallus vel iudicio parium feudum dimisit, fidelitas durat.

[5.]
[*V2*: 149.5 Si plures sint domini vel vasalli,
an plures fidelitates vel servitia debeantur]

Cum plures fratres vasalli paternum habent beneficium, donec eum[2] indivisum possident, una fidelitas et unum servitium domino fieri debet. Si vero partitum fuerit, quot partes, tot erunt fidelitates. Servitia vero pro partibus, ne uno primo videantur graviora, et[3] pro quantitate beneficii moderanda. Plures autem domini, et si feudum inter se

[1] *LF 2.52.3*. [2] *V2* illud. [3] *V2* Servitia vero non pro partibus, ut unum primum, videlicet graviora, sed.

### [4.]
### [*V2*: 149.4 Concerning fealty]

Since we have mentioned fealty, let us briefly consider some matters with regard to it.

[§1] If a benefice is [given] without fealty and the vassal does something that is against his lord, he is to lose the benefice by judgment of his peers. We say the same with respect to those who swear fealty.

[§2] If a lord requires fealty from a knight, according to some, the lord ought to present a book[1] to the knight, and the knight ought to either do fealty or respect the judgment of his peers within a year. If this is not done, according to some, the knight can be condemned with regard to his benefice—which seems to be contrary to the command given by King Lothair at Pavia. On the other hand, that a book should be usually shown to the vassal, is a voluntary matter, not a necessity, as it is a sort of symbol of the requested fealty, for the purpose of remembering.

[§3] And sometimes it comes about that a vassal says he will do fealty to the lord which his peers have approved: in this case, he does not lose the benefice, provided that the lord allows that he holds court.[2]

[§4] Concerning those who swear fealty, if a separation [between a lord and a vassal] has taken place with the consent of both, fealty is ended. If the vassal leaves the fief by his will or by judgment of the peers, fealty stands.

### [5.]
### [*V2*: 149.5 Whether several [oaths of] fealty or services are due if there are several lords or vassals]

When several brothers who are vassals have an ancestral fief, as long as they possess it undivided, only one [oath of] fealty and one service ought to be rendered to the lord. But if the fief has been divided, there shall be as many oaths of fealty as portions. However, services are to be measured proportionately to the parts and according to the size of the benefice, lest they appear more burdensome than the original one.[3] On the other hand, even if several lords divide a fief among themselves, in no way can they

[1] *A book over which to swear, presumably a Gospel book or a Bible.* [2] *Lit.* if it depends on the lord that he holds court. *This passage is rather obscure. Spruit-Chorus (104) suggest that the vassal is not to lose the fief if it depends on the lord that he does not gather his peers' court. Clyde (1154) purports a similar opinion: 'if it is due to the superior that no court is convened'. The text outlines indeed a situation in which the content of the oath of fealty, i.e. the explicit terms of the agreement between lord and vassal, must be discussed by the peers' court, which should be convened by the lord.* [3] *V2* However, the provision of services is to be regulated not so that each of them is rendered like the original one, resulting in a greater burden, but proportionately to the size of the [portion of] benefice.

dividant, nullo modo nisi unam fidelitatem ex feudo habere poterunt. Servitium vero omnibus non gravitate, sed moderamine faciendum est.

[6.]
[*V2*: 149.6 Culpam unius ex coheredibus ceteris non praeiudicare]

Cum feudum hereditarium uni ex coheredibus propria culpa auferetur a paribus per iudicium, ceteris non praeiudicat. Hoc autem ita intellegitur, ut vivo eo vel suis heredibus feudum ad ceteros venire non intelligatur.

[7.]
[*V2*: 149.7 Ut ratio vasalli prius, quam domini discutiatur]

Si contentio fuerit inter dominum et vasallum, et dominus habuerit aliquam rationem contra vasallum et vasallus contra dominum, vasalli ratio prius discutiatur: quoniam pares maiorem iurisdictionem habent de suo pari, quam de suo domino.

[8.]
[*V2*: 149.8 De evictione]

Generaliter verum est in feudis, dominos de evictionibus teneri, aut[1] si quis sciens investituram alterius beneficii acquisierit, eo evicto nullam adversus dominum vasallum actionem habere dicimus, quoniam in acquirendo malam habuit fidem.

[9.]
[*V2*: 149.9 De feudis impropriis, quae auferuntur dantis arbitrio]

Unum quidem non minus utile, sed satis congruum superioribus adverti, et ex comprobato usu in scriptis bono arbitrio reducere procuravi. Si quis igitur pro vicedominica-

[1] *V2* at.

have more than one [oath of] fealty from that fief, and service must be rendered to all not in a burdensome fashion but with due measure.

[6.]
[*V2*: 149.6 That the fault of one of the coheirs does not prejudice the others]

When a hereditary fief is taken away through trial by peers from one among several coheirs for his own fault, this does not prejudice the others. However, this is understood as follows, that the fief is not understood to pass to other [coheirs] while he or his heirs are alive.

[7.]
[*V2*: 149.7 That the vassal's evidence should be discussed before the lord's]

If there is a dispute between a lord and a vassal, and the lord has some argument against the vassal, and the vassal against the lord, the vassal's argument is to be examined first since peers have a superior jurisdiction over what concerns their peer than over what concerns their lord.

[8.]
[*V2*: 149.8 Concerning eviction]

It is normally true that lords are liable for eviction in respect to fiefs. However, if someone wittingly receives investiture of the benefice of another, we say that the vassal, once evicted, has no action against the lord, since he was in bad faith when he acquired it.

[9.]
[*V2*: 149.9 Concerning improper fiefs,
which are taken away at the grantor's will]

I have noticed one thing, certainly no less useful, and which is consistent with the foregoing, and, with my best judgment, I have taken care to reduce it to writing from established usage. If, therefore, in return for the duties of a 'vicedominus', 'villicus', or, so

ria,[1] vel villicaria, et, ut ita dicam,[2] pro decania vel aliis quibuscunque angariis feudum, quod improprium est, acceperit, nisi specialiter hoc actum sit inter contrahentes, id est nominatim 'feudum cum honore feudi', et ita 'ut non liceat domino auferre, quod datum fuerit, etiamsi administratio illa auferatur', quod datum est[3], penitus ablata administratione sine omni obstaculo auferri[4] liceat. Si autem, quod superius dictum est, probare conetur, licet[5] quodammodo possidere vasallum a quibusdam credatur, non iureiurando decidi oporteat,[6] sed testibus vel instrumento aliisve legitimis probationibus causa firmiter approbetur.

[10.]
[*V2*: 149.10 Prius possessionem restituendam esse, quam de principali causa agatur]

Si qua contentio de beneficio inter aliquos (prout saepe fieri solet) orta fuerit, si unus dominus vel loco domini habeatur, et alter vasallus vel loco vasalli habeatur, si per pares secundum usum regni iudicium ventiletur, primo de suo recto beneficio investiri debet, et, si possessio aliqua perturbata fuerit, modo restitui debet.

[11.]
[*V2*: 149.11 Si unus ex fratribus dederit suam partem fratri, vel domino, vel extraneo]

Si alter ex fratribus, qui paternum habeat beneficium, suam portionem dederit domino vel alicui extraneo, dominus vel extraneus tamdiu teneat sine praeiudicio quamdiu ille, qui dedit, heredem masculum habuerit. Si vero sine herede decesserit, alter frater si vixerit vel eius heres sine ullo obstaculo et temporis praescriptione beneficium, quod

[1] *V2* pro vice dominicaria. [2] *V2* et, ut dicam. [3] *V2 omits* est. [4] *V2* auferre. [5] *V2* et. [6] *V2* oportet.

to speak, a 'decanus',[1] or for any other administrative function, someone receives a fief, which is not a proper fief, the lord is permitted to take away entirely and without any impediment what has been given, once the office is taken away; unless this has been specifically agreed between the parties, i.e. expressly that 'this fief [comes] with all the rights of a fief', and thus that is not permitted for the lord to take away what has been given, even if that office is taken away. If, however, someone attempts to prove what is said above,[2] although certain people think the vassal is in some way in possession, the matter must not be decided by oath, but it is to be soundly proved by witnesses, an instrument, or other legitimate proofs.

### [10.]
### [*V2*: 149.10 That possession must be restored before proceeding with the main question in dispute]

If any dispute, as often happens, has arisen between anyone over a benefice, and on the one hand, we have the lord or someone in place of the lord, and on the other hand, we have a vassal or someone in place of the vassal, and the trial, according to the usage of the realm, proceeds through the [vassal's] peers, [the vassal] ought to be first invested with his rightful benefice; and, if any possession has been disturbed, it ought to be restored immediately.

### [11.]
### [*V2*: 149.11 If one brother gives his portion [of a fief] to another brother, or to the lord, or to an outsider]

If one of [two] brothers who has an ancestral fief gives his portion to the lord or some outsider,[3] the lord or the outsider are to keep it without prejudice [in respect to their legal position] as long as he who gave it has a male heir. But if he dies without an heir, the other brother, if he is alive, or his heir, may claim the benefice, which is hereditary, from any possessor without any impediment or long-time prescription[4] [standing

[1] *These rural offices, often associated with lordship, generally had the duration of one year. Their functions could vary from place to place; in general, however, a 'vicedominus' fulfilled political and judicial duties on behalf of a lord; a 'villicus'* (*see Glossary: 'gastaldus'*) *was in charge of estate management and signorial taxation; a 'decanus' was usually responsible for lesser duties, such as petty justice and policing.* [2] *I.e. that the fief is granted with a fief's full rights.* [3] *I.e. a non-relative.* [4] *On 'praescriptio', see Glossary.*

hereditarium est, vendicet a quocunque possidente. Hoc idem dicimus et si fratres fuerint, et alter ab altero ex fratribus acquisierit; hoc enim verissimum ex usu comprobato dicimus.[1]

[12.]
[*V2*: 149.12 Patrem in feudo filii non succedere]

Quoddam usui traditum recordationis causa in scriptis ponere procuravi. Si quis igitur habens filium ipsum per dominum investire fecerit, nisi nominatim cum domino pactus fuerit, 'ut si filius decesserit ante patrem, quod feudum ad patrem[2] revertatur', dicitur defuncto ante patrem filio patrem carere beneficio et domino acquiri beneficium.

[13.]
[*V2*: 149.13 De investitura facta marito vel utrique coniugi]

Si maritus de feudo suae uxoris investiatur ea absente, nisi nominatim quasi gerendo uxoris negotia, non valet. Secus si acquisierit feudum ea sciente vel iubente.[3] Si vero uterque insimul investiatur, pro parte sibi proficiunt, nisi cum iam dicta distinctione factum fuerit. Et dicimus[4] etiam, ut, si unus ante alterum sine herede decesserit, quod alterius pars domino acquiratur.

[14.]
[*V2*: 149.14 De fructibus feudi]

Unum quidem satis usitatum dicimus, quod, si aliquis decesserit nullo in feudo relicto herede, ius feudi ad dominum pertinere dicimus. Fruges autem exstantes non ad dominum, sed ad filias ipsius vasalli vel etiam ad uxorem eius pertinerent;[5] et hac ratione creditor eas retinere potest, licet pignus habere non possit, et hoc cum distinctione imperialium constitutionum.

[1] *V2* didicimus. [2] *V1* patrum. [3] *V2* nisi nominatim quasi gerendo uxoris negotium investiatur, sibi acquirit feudum, ea sciente vel iubente. [4] *V2* Et diximus. [5] *V2* pertinere.

against him]. We say the same also if there are brothers and one acquires [a portion] from the other brother: indeed, we say that this is absolutely correct based on established usage.[1]

[12.]
[*V2*: 149.12 That a father does not succeed to his son's fief.]

I have taken care to put into writing, so that it may be remembered in future, a particular matter transmitted through usage. If, therefore, someone having a son has him invested by the lord, unless it is expressly agreed with the lord that 'if the son dies before the father, the fief is to revert to the father', it is said that when the son dies before the father, the father loses the benefice, and the benefice is acquired by the lord.

[13.]
[*V2*: 149.13 Concerning investiture made to a husband or both spouses]

If a husband is invested with his wife's fief in her absence, and it is not expressly [given to him] in the capacity of administrator of his wife's business, [the investiture] has no effect. It is different if he acquires it with her consent or at her direction.[2] However, if they are both invested at once, each of them will enjoy a share of the fief—unless this has been done with the aforesaid distinction. We also say that, if one dies before the other with no heir, the portion of the other is to be acquired by the lord.

[14.]
[*V2*: 149.14 Concerning the fruits of a fief]

We say that one thing indeed is quite commonly accepted as usage: if anyone dies leaving no [male] heir to a fief, we say that the right to that fief belongs to the lord. The extant fruits, however, do not belong to the lord but to the daughters of that vassal, or even his wife. For this reason, a creditor can retain them, even though he cannot have them in pledge; and this [is] subject to the distinction of the imperial constitutions.[3]

[1] *V2* Indeed, we came to know from established usage that this is absolutely correct. [2] *V2* and it is not expressly granted to him in the capacity of administrator of his wife's business, he acquires the fief only with her consent or at her direction. [3] *The same matter is treated in* LF *2.28.3 and 2.45, but it is unclear to what constitutions this chapters refers.*

[15.]

[*V2*: 149.15 An praescriptione feudum acquiratur]

In beneficiis, ut in ceteris contractibus, praescriptiones currere, satis humanum et rationi congruum videtur. Si quis ergo feudum alienum bona fide ab aliquo iusta traditione acceperit, licet dominus non sit, cum verus dominus in traditione putetur, longi temporis praescriptione ius sibi acquirit. Si vero malam fidem habuerit, nulla se poterit tueri praescriptione nec etiam de evictione agere poterit.

[16.]

[*V2*: 149.16 De probatione investiturae]

De ingressu curiae a quibusdam varia ac diversa putantur. Nos autem, quod saepius ac rationabiliter in multis curiis et civitatibus intelleximus, in scriptis bonae recordationis causa inserere procuravimus. Quicunque igitur beneficium per investituram acquisierit sine possessionis traditione, pares ad investituram habeat, ut pro ipso veritas discernatur, cum controversia inde fuerit. Sane si possidet, aliis quibusdam adiuvetur adminiculis. Verumtamen quia milites[1] inopes vasalli sunt, per testes vel per breve testatum probatio satis competens esse dignoscitur.

[17.]

[*V2*: 149.17 Conditionem tacite feudum sequi]

Beneficia conditionalia, quae in maioribus curiis a veteri tempore esse noscuntur, utpote patriarcharum, archiepiscoporum, abbatum, abbatissarum, ducum, marchionum, comitum, capitaneorum sive etiam maiorum valvasorum, si duobus, tribus vel deinceps aliis dantur vasallis, tacite[2] conditiones eos sequuntur, nisi nominatim in ipsis traditionibus ipsae conditiones excipiantur. Hoc idem etiam de his conditionibus, quae noviter constituuntur, ad harum similitudinem verissimum fore sapientibus placet.

[1] *Vienna* (*f. 53$^{vb}$*) quia multi mliites. [2] *V1* tacitae.

[15.]
[*V2*: 149.15 Whether a fief may be acquired by prescription]

It appears rather appropriate to human nature and congruent to reason that prescriptions[1] proceed in respect to benefices, just as they do in respect to other contracts. Therefore, if anyone receives the fief of another in good faith by a lawful transfer from someone, even though [this one] is not the lord, since at the time of the transfer he is assumed to be the true lord, he [who so receives the fief] acquires a right [over it] by long-time prescription. However, if he was in bad faith, he cannot defend himself on the grounds of prescription, nor can he bring an action for eviction.

[16.]
[*V2*: 149.16 On proving investiture]

Concerning the access to a [lord's] court, various and divergent opinions are held by different people. However, so that it may be remembered in future, we have taken care to put into writing what we have very often and reasonably understood in many courts and cities. Therefore, whoever acquires a benefice through investiture without transfer of possession is to have peers present at the investiture so that the truth can be discerned to his benefit when there is a dispute over this matter—if he possesses it, of course, he may be assisted with some other means. Nonetheless, because [many] knights are poor vassals,[2] proof through [other] witnesses or certified charter is acknowledged to be sufficiently valid.

[17.]
[*V2*: 149.17 That a condition tacitly follows the fief]

If conditional benefices—which are known to be in place since times of old in the greater courts, such as those of patriarchs, archbishops, abbots, abbesses, dukes, marquesses, counts, 'capitanei' or even greater 'valvasores'—are given to two, three or, subsequently, further vassals,[3] the conditions follow them tacitly, unless those same conditions are expressly excepted in those transfers. It seems right to the experts that, on grounds of similarity with these ones, the same shall be certainly true with respect to those conditions that are newly established.

[1] *On 'praescriptio', see Glossary.* [2] *Here it is perhaps suggested that sometimes vassals cannot afford to arrange to go to the investiture.* [3] *This perhaps refers to the degrees of subinfeudation.*

[18.]
[*V2*: 149.18 Fratrem fratri in feudo novo non succedere]

Si duo fratres in heredes masculos et feminas de beneficio investituram acceperint, altero decedente filia relicta, neptem cum patruo ad feudum venire dicimus, cum unusquisque fratrum suae soboli bene consuluit. Si enim frater suus sine ulla progenie decesserit, feudum non ad superstitem sed ad dominum perveniet, nisi pactum de successione factum foret.

[19.]
[*V2*: 149.19 De investitura veteris et novi beneficii]

Beneficium intelligitur de veteri et novo, et cum de veteri fit investitura, satis sit si de recto beneficio fiat investitura. Haec autem investitura ab unaquaque persona fieri potest sive saeculari sive ecclesiastica, si antiquitus eorum consuetudo fuerit, haec secundum quosdam et a femina et a minore vigintiquinque annis fit. De novo si fiat investitura, nominatim et de certa re oportet fieri. Haec investitura a muliere secundum quosdam non valet, quibusdam valere placet, quae sententia mitior est. A minore autem 18 annorum non valet, hoc etiam de minoribus annorum 25 asseritur, ut quibusdam placet.

A praelatis ecclesiarum vero tradi legitime dici potest, ut iure valeat investitura,[1] dum tamen dissipator videri non possit. Quod si aliter intelligeretur, nullum beneficium ab ecclesiasticis personis datum retineri posset. Dicitur etiam, quod, si coniunctae personae gratia vel etiam alicui alteri tale dedit feudum, quod duos consimiles vasallos acquirere posset, inutile est beneficium.

[20.]
[*V2*: 149.20 Iusto errore excusari vasallum, qui fidelitatem non fecit]

Quicunque paratus est facere bene fidelitatem domino suo, ‘prout pater fecerat fidelitatem patri vel antecessori domini’, dum tamen haec bona fide dicat et non dolose, sed

[1] *V2* A praelatis ecclesiarum vero tradi, et legitime, dici potest iure, ut valeat investitura,

[18.]
[*V2*: 149.18 That a brother does not succeed his brother to a new fief]

If two brothers receive investiture of a benefice inheritable by male and female heirs, we say that when one dies with a daughter left, this niece comes to the fief together with her uncle, because each brother has properly looked after his offspring: for if a brother dies without any progeny, the fief does not come to the surviving brother but to the lord, unless an agreement concerning such succession has been made.

[19.]
[*V2*: 149.19 Concerning investiture of an old and a new benefice]

A benefice is understood to be either old or new. When investiture is made of an old one, it is to suffice that investiture is made 'concerning the rightful benefice'. Indeed, this investiture can be made by any person, whether lay or ecclesiastic, if it is their long-standing custom. According to some, this may be done even by a woman or by someone below the age of twenty-five. If investiture is made of a new benefice, it needs to be made expressly in respect to a specific property. According to some, this investiture has no effect if [made] by a woman; to some others it seems correct that it has effect, which is the milder opinion. However, it has no effect [if made] by someone below the age of eighteen—this is also asserted in respect to someone below the age of twenty-five, as seems correct to some.

However, it can be said that [a benefice] is transferred lawfully by prelates of churches, so that the investiture has effect by law, but only when [the grantor] cannot be regarded as a squanderer. Were this to be understood differently, no benefice given by ecclesiastical persons could be retained. It is also said that if [a prelate] has given a fief to favour a relation, or even [if he has given it] to someone else, [and the fief] is of such value that for it he could have obtained two similar vassals, the [grant of the] benefice is ineffective.

[20.]
[*V2*: 149.20 That a vassal who does not do
fealty is excused by a justifiable error]

Anyone who is prepared to properly do fealty to his lord in the same way as his father had made it to the lord's father or predecessor, as long as he says these things in good faith and without fraudulent intent, but by a justifiable error, can in no way be con-

iusto errore, omnino condemnari non potest. Cum enim controversia est inter ipsos, per antiquitatem feudi vel per breve testatum vel per testes domino incumbit probatio, alioquin per vasallum veritas inquiratur.

[21.][1]
[*V2*: 149.21 Factum fratris fratri in feudo paterno non nocere]

Quoddam satis bene dispositum ad utilitatem, et ad perniciosam calliditatem destruendam in scriptis inserere curavimus. Quidam miles bina beneficia a duobus dominis, prout solitum est, acquisivit. Qui decedens duos reliquit filios, qui paterna beneficia inter se dividentes alter eorum suo domino pro beneficio, quod ad eum venit, fidelitatem nullo anteposito, sicut pater fecerat, fecit. Alter vero frater alteri domino similiter pro suo beneficio, quia alium nullum dominum habere videbatur, nullo anteposito fidelitatem fecit. Defuncto posteriore fratre sine filiis, utrumque feudum in unam, ut prius, venit personam, et sic dominus talem fidelitatem quaerit, qualem frater eius fecerat. Quas altercationes amputantes dicimus, illud, quod frater fecit, nihil superstiti obesse, licet in secundam et tertiam generationem, et usque ad infinitum pervenerit.

[1] *This chapter has several similarities with* LF *2.52.2.*

demned.[1] For when there is a dispute between them [over this matter], the burden of proof, whether through the antiquity of the fief, a certified charter, or witnesses, falls on the lord; otherwise, [if he fails in his proof], the truth is to be sought through the vassal.[2]

[21.]
[*V2*: 149.21 That the deed of a brother does not harm his brother in relation to an ancestral fief]

We have taken particular care to put into writing a certain disposition for the general benefit and the destruction of a pernicious cunning. A certain knight acquired two benefices from two lords, in the accustomed way. When he died, he left two sons who divided between themselves their father's benefices. One of them did fealty to his lord for the benefice that came to him, just as his father had done, acknowledging no superior lord. The other brother, however, did fealty to the other lord for his benefice in a similar way, acknowledging no superior lord, since he was supposed to have no other lord. Having the latter brother died without sons, both fiefs came to only one person, as before, and so the [latter's] lord seeks [from the surviving brother] the same fealty as his brother had done. To cut off these altercations, we say that what one brother did, should in no circumstance stand in the way of the surviving one, even though [the fief] comes to a second or a third generation, and so on, ad infinitum.

[1] *The nature of this mistake is unclear. The heading, a later addition, states that the issue at stake is the vassal's failure to do fealty, but this does not appear clearly from the text, which rather seems to suggest that the question concerns the content of the oath. Spruit-Chorus (109) see a vassal willing to swear in the same way that, as he wrongly believes, his father had previously done. Therefore, the text would imply that these terms are rejected by the lord, who demands that the vassal swear another oath. Foramiti (col. 1787–1788) suggested instead that the vassal promises to do fealty but then does not take the oath for an excusable error. Likewise, Clyde (1157) saw a vassal 'who by mistake has omitted to swear fealty to his superior, but who is prepared to do so'. Since the text seems to imply that the lord has the right to decide the content of the oath (supra, Appendix 1, ch. 4), the interpretation of Spruit-Chorus seems correct. However, I have opted to maintain the slight ambiguity of the Latin text.* [2] *I have opted for a literal translation, even though the overall meaning, especially the 'antiquity of the fief' as a form of proof, seems unclear: the term 'enim' implies some consequentiality between the two parts of the chapter, which would be clearer if one assumed that the 'antiquity' of the fief is not a form of proof but the matter in dispute—a matter that seems indeed closely related to the suitability of the oath once sworn by the vassal's father.*

[22.]
[*V2*: 149.22 De feudo guardiae et gastaldiae]

Quod nomine gastaldiae vel guardiae in feudum datur, ablata gastaldia vel guardia iure auferri potest.

[23.]
[*V2*: 149.23. De successione feudi]

Quidam dominus habens beneficium reliquit duos filios, et unusquisque ipsorum habuit duos vel tres filios. Unus illorum fratrum decessit una tantum filia relicta. Portionem illius non ad omnes superstites, sed ad patruos illius et suis posterioribus pertinere dicimus.

[24.]
[*V2*: 149.24 De investitura alieni beneficii]

Qui accepit[1] investituram alterius beneficii, inutilis est haec investitura. Et qui sciens hoc agit, de evictione agere non potest.

[25.][2]
[*V2*: 149.25 Non amittere feudum eum, qui sine dolo cessavit per annum in petenda investitura]

Inter dominum et vasallum nulla fraus debet esse et inde potest accipi, si vasallus non dolose steterit per annum, quaerere investituram sui beneficii, non damnabitur. Dolus enim abest, si iusta causa impediente steterit vel etiam cum amore servitium fecerit domino conscio. Dicimus autem, ut,[3] si contra ea, quae in fidelitate nominantur, fecerit, beneficio carebit.

[1] *V2* Si quis acceperit. [2] *This chapter is very similar to* LF *2.52.3.* [3] *V2* quod *for* ut.

[22.]
[*V2*: 149.22 Concerning a fief of castle-guard and 'gastaldia']

What is given in fief as 'gastaldia' or castle-guard, once the 'gastaldia' or castle-guard has been taken away, can be taken away by right.

[23.]
[*V2*: 149.23 Concerning succession to a fief]

A certain lord who had a benefice left two sons, and each of them had two or three sons. One of these brothers died having left only one daughter. We say that his portion does not belong to all the surviving [coheirs], but to his paternal uncles and their descendants.

[24.]
[*V2*: 149.24 Concerning investiture of another's benefice]

[If] someone receives investiture of another's benefice, this investiture is ineffective. And he who does so wittingly cannot bring an action for eviction.

[25.]
[*V2*: 149.25 That he who, without fraudulent intent, has remained for one year without seeking investiture does not lose the fief.]

Between a lord and a vassal there ought to be no deception; hence it can be accepted that if a vassal remains without fraudulent intent for a year without seeking investiture of his benefice, he shall not be condemned. Because there is no deceit if he so remains as a result of the impediment of a legitimate cause—or, also, if he renders service with devotion to a lord who is aware of it. On the other hand, we say that if he does anything against what is specified in [the oath of] fealty, he shall be deprived of the benefice.

[26.]
[*V2*: 149.26 Ex delicto vasalli feudum ad dominum redire]

Vasallus habens feudum deliquit contra dominum, cui iudicatum est[;][1] agnati cum domino litigant. Quidam domino dicunt pertinere, quidam agnato. Dicimus autem, ad dominum pertinere,[2] donec aliquis masculus ex delinquente vasallo superest; alii vero contradicunt.

[27.]
[*V2*: 150 De feudis et beneficiis constitutiones imperiales][3]

Imperator Henricus, Dei gratia divina favente secundus Romanorum Augustus.[4]

De militum beneficiis quoniam dubias variasque causas in regno nostro esse cognovimus, ideoque ad rei publicae statum quaedam statuimus. Si quis ergo dominum suum interfecerit vel vulneraverit ipsum,[5] se[6] suamve domum[7] obsederit, vel eum cucurbitaverit, vel contra ea, quae in fidelitate nominantur, fecerit, vel his supra dictis consilium dederit, parium laudatione beneficium amittat.

Si vero de supradictis se defendere voluerit, testibus a parte domini deficientibus, cum tribus paribus se expurget, si autem pares habere non potuerit, cum duodecim propinquioribus parentibus se defendat (usu vero curiali solus defendat).[8] Si quis autem suorum parium, idoneus tamen, exinde se veritatem scire dixerit et per pugnam eum fatigare voluerit, ut per pugnam se defendat dicimus.[9]

Si quis autem per annum steterit, quod domino non servierit,[10] parium laudatione beneficium amittat, (curiali tamen usu id redimere potest pro medietate, quantum valuerit). Sed si hoc defendere voluerit, duos vel unum saltem parem ostendat, et cum his se serviisse iuret, et si pares paremve habere nequiverit, cum tribus vel duobus propinquioribus parentibus se intra annum servire[11] iuret, (usu tamen curiali solus iurare conceditur). Qualiter autem iuret, an solus vel cum aliis, nihil interest, dum tamen servitia nominet.

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[1] *V1* cui iudicatum est? *The question mark seems out of place.* [2] *V2* ad dominum non pertinere; *Vienna* (*f. 54*[rb]) *agrees with V1.* [3] *MGH, Constitutiones*, I, 104–105 (n. 56); *the date of the constitution* (*27 August 1127*) *does not match with its attribution to Henry* II (*1002–1024*), *as the incipit of the text indicates, nor to Henry* III (*1047–1056*), *as cautiously suggested by the editors of* MGH. *The year 1127 points to Lothair* III, *so that it is well possible that this text is connected to his constitution contained in* LF *2.52.3.* [4] *V2* Imp. Augustus Henricus secundus. [5] *V2* ipsum dominum. [6] *V2 omits* se. [7] *V2* dominam. [8] *Vienna* (*f. 22*[ra]) *omits* (usu ... defendat). [9] *V2* edicimus. [10] *V2* Si quis autem fuit, qui domino non servierit. [11] *V2* serviisse.

[26.]
[*V2*: 149.26 That a fief goes back to the lord on account of a vassal's felony]

A vassal who has a fief commits a felony against his lord, to whom the fief has been assigned, and [the vassal's] agnates litigate with the lord. Some say that it belongs to the lord, some others to the agnate. However, we say that it belongs[1] to the lord as long as any male descendant of the delinquent vassal survive. Others, however, disagree.

[27.]
[*V2*: 150 Imperial constitutions concerning fiefs and benefices]

Henry the Second, by the favour of God's divine grace, august emperor of the Romans.

Since we have become aware that there are doubtful and diverse controversies in our realm concerning the benefices of knights, we have therefore made some provisions for the [good] state of the commonwealth. Hence, if anyone kills his lord or wounds him, or besieges him or his house,[2] or cuckolds him, or does anything against what is specified in [the oath of] fealty, or provides counsel on any of the aforesaid things, he is to lose the benefice by the judgment of [his] peers.

However, if he wishes to defend himself in respect to the aforesaid, and there are no witnesses on the lord's part, he is to purge himself with the support of three of his peers. If, however, he cannot find peers, he is to defend himself with twelve of his closest relatives—but, by the 'usus curialis',[3] he may defend himself alone. Moreover, if afterwards any of his peers, provided that he is trustworthy, says that he knows the truth and wishes to engage him in trial by battle, we declare that he is to defend himself by battle.

Moreover, if anyone remains for a year without rendering service to the lord,[4] he is to lose the benefice by his peers' judgment—nonetheless, by the 'usus curialis', he can redeem it for half of what the fief is worth. But if he wishes to defend himself on this point,[5] he is to produce two peers, or at least one peer, and swear together with them that he has rendered service. If he is unable to produce the peer or peers, he is to swear with the support of three, or two, of his closest relatives that he has rendered service within the [past] year—nonetheless, by the 'usus curialis', it is granted to him to swear alone. But in what manner he is to swear, whether alone or with others, does not matter as long as he specifies the services [he has rendered].

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[1] *V2* We indeed say that it does not belong. *V1 and Vienna seem correct on this point, as the lord does not give up his right as long as the direct line of descent of the felon can lay claim on the fief.* [2] *V2* or his lady. [3] *'Usus curialis' seems to refer to the custom of knights, or noble fief-holders: see Glossary.* [4] *V2* Moreover, if there is anyone who does not render service to the lord. [5] *V2* But if he chooses not to defend himself on this point. *This solution makes sense only if one interprets it as 'if he chooses not to redeem the fief'. V1 seems more reliable considering the following text.*

Si autem concorditer cum domino suo se habuerit, dominum saepe videndo, tunc dicimus, ut probet per testes, se[1] servitium fecisse, et per se non stetisse. Si autem aliqua inter dominum et vasallum discordia fuerit, vel si domicilia in longinquum habuerit vasallus,[2] domino se repraesentando servitium promittat, ut,[3] si necesse fuerit, hoc probare possit[4] iureiurando, saltem ad finem controversiae vasallo a paribus dato.

Si quidem intra annum servierit, quod levissimum fuerit, et dominus aliud servitium imposuerit, quod vasallus neglexerit, unde damnum domino illatum fuerit, usque ad fruges feudi[5] parium aestimatione damnum resarciat. De aliis vero culpis, unde beneficium[6] non amittitur, parium laudatione defendat se, ut supra, vel emendet.

Datum VI. Kal. Septembr. anno MCXXVII.

[28.]
[*V2*: 150.2 De feudo ligio]

Si quis investitus de feudo ligio, pro quo contra omnes fidelitatem domino debet, Lucio et Titio, ex se descendentibus filiis, sibi heredibus institutis, vita decesserit, divisione facta, si ad solum Titium feudum pervenerit, rationabiliter placuit, eum solum fidelitatis sacramento esse obnoxium, ad quem solida feudi iura transierint. Quodsi ab alio domino Lucius postea feudum per investituram acquisiverit, pro quo similiter ei contra omnes homines fidelitatem fecerit, decedente Titio sine liberis, ad quem devolvatur feudum, quod ex divisione habuerat, an ad alium fratrem, an ad dominum quaeri potest. Et cum placeat, quem ligium hominem duorum esse non posse, videri potest feudum ad dominum pertinere. Sed rectius visum est, feudum, quod per investituram acquisiverit, impedimento ei non esse, licereque ei per substitutum acceptabilem domino priori servire.

[1] *V2 omits* se. [2] *V2* habuerint, vasallus. [3] *V2* et *for* ut. [4] *V2* probet *for* probare possit. [5] *V2* feudatarius *for* feudi. [6] *V2* feudum *for* beneficium.

Moreover, if he has been in harmony with his lord, by often seeing him, in that case we say that he is to prove through witnesses that he has done service and that [the delay] did not depend on him. But if there is any disagreement between the lord and the vassal, or the vassal has residences far away, he is to promise his services to the lord by presenting himself so that, if necessary, he may prove this by oath,[1] at least when [oath-taking] has been given to him by the peers to end the dispute.

If, however, within a year he renders some trifling service, and the lord imposes on him another service, which the vassal neglects, whereby damage is done to the lord, he is to refund the damage up to his fief's fruits, according to his peers' estimation.[2] But concerning other faults for which a benefice is not lost, he is to defend himself according to the judgment of his peers, as above, or provide compensation.

Given on the sixth day of the Kalends of September ⟨27 August⟩ in the year 1127.

## [28.]
## [*V2*: 150.2 Concerning a liege fief]

If anyone is invested with a liege fief, for which he owes fealty to the lord against everyone, and departs this life with sons, Lucius and Titius, descending from him, whom he has declared his heirs, and a division [of the inheritance] has been made, if the fief goes to Titius alone, it has reasonably seemed correct that he alone, to whom the full rights of the fief pass, is bound by the oath of fealty. And if afterwards Lucius acquires a fief through investiture from another lord, for which in a similar way he does fealty against all men, and Titius dies without children, it can be asked to whom his fief (which he had by the division) is to devolve—whether to the other brother or the lord. And since it seems correct that one cannot be a liegeman of two [persons], it can be assumed that the fief belongs to the lord. However, it has been more rightly assumed that the fief that he acquires through investiture does not prejudice him and that he is permitted to render service to the prior lord through an acceptable substitute.

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[1] *V2* But if there is any disagreement between the lord and the vassal, or they have residences far from each other's, the vassal is to promise his services to the lord by presenting himself and, if necessary, prove it through an oath. [2] *V2* and the lord receives damage in respect to his profits, the fief-holder is to refund the damage according to his peers' assessment.

[29.]
[*V2 150.3* Imperatorem feudum amittere vel alium pro se fidelem dare]

Ex facto incidisse scio, Fridericum principem nostrum, cum ab initio dux esset et pro ducatu fidelitatem faceret, divino nutu postea Imperatorem creatum, petita ab eo fidelitate pro ducatu, petenti domino respondisse, non teneri se fidelitatem facere, cum omne hominum genus sibi fidelitatem debeat, et ipse soli Deo et Romano pontifici. Sed cum insistente feudi domino de hoc contenderetur, proceribus prudenter visum est, feudum amissum esse vel alium ducem in ducatu constituendum, qui feudo servire debeat et domino fidelitatem faciat.

[30.]
[*V2 150.4* Ecclesiam fidelitatem non facere]

De negotio, super quo nos consulere voluisti, tibi secundum ius curiae et usum feudi breviter respondemus, quatenus pro feudo, quod ab aliquo per ecclesiam detinetur, nulla sit facienda fidelitas.

[31.]
[*V2 150.4bis* Non cogi vasallum pro uno feudo duas fidelitates facere]

Insuper etiam te instructum esse volumus, quod, si dominus, a quo feudum tenebatur, diem suum pluribus heredibus relictis obierit, vasalli, qui communiter illud tenent, non coguntur fidelitatem pro eo feudo facere, nisi domini illud feudum primo partirentur, quoniam secundum ius feudi non debet quis duas fidelitates pro eodem feudo facere.

[32.]
[*V2 150.5* Filios tantum secundi matrimonii matri in feudum succedere]

Mulier, quae feudum secundi viri contemplatione acquisierat, si ex utroque matrimonio superstitibus liberis decesserit, solos ex secundo viro susceptos filios ad feudi successionem admitti, usu curiarum obtentum est.

[29.]
[*V2 150.3* That the emperor [has to] either lose the fief or present another vassal in his place]

I know, from a real case,[1] that it happened that Frederick, our prince, since initially he was a duke and did fealty for the duchy, after being made emperor by God's will, was asked to do fealty for the duchy. And he answered to the lord who asked it that he was not bound to do fealty, as all humankind ought to do fealty to him, while he himself [should do so] only to God and the Roman pontiff. However, since the lord of that fief insisted and a dispute would have arisen over this matter, it prudently seemed right to the great nobles that either the fief should be lost or another duke should be established in the duchy, who ought to render service for that fief and do fealty to its lord.

[30.]
[*V2 150.4* That a church should not do fealty]

Concerning the case about which you decided to consult us, we briefly respond to you in accordance with the law of [this] court and the usage of fiefs, that for a fief that is held from someone by a church no fealty should be done.

[31.]
[*V2 150.4bis* That a vassal is not compelled to do two fealties for one fief]

Moreover, we also want you to learn that if a lord from whom a fief was held passes away having left several heirs, the vassals who jointly hold that fief are not compelled to do fealty for that fief unless the lords first divide that fief [among themselves], because according to the law of fiefs no one ought to do two fealties for the same fief.

[32.]
[*V2 150.5* That only the sons from a second marriage succeed the mother to a fief]

If a woman who had acquired a fief in consideration of [her marriage] with a second husband dies with children surviving from both marriages, it has been decided by the usage of courts that only the sons she had from the second husband are allowed to succeed to the fief.

[1] *No such situation is known to have occurred regarding either Frederick I, or Frederick II.*

[33.]
[*V2 150.6* (*part 1*) Casus, quibus femina in feudo succedit]

Si cui militi ad certum servitium feudum fuerit datum, isque relicta ex se descendente femina decesserit, quae id servitium iuxta feudi conditionem non minus decenter praestare possit quam masculus, etsi in investitura minime cautum sit, ut et feminae ad id adspirare valeant, eam tamen admitti, rectum putamus; quin immo hoc casu simul cum masculo in feudo eam succedere, quidam putant. Quod multo magis dignum observantia existimavimus, cum feudum sic datum est, 'ut nullum pro eo servitium fiat', ut pleraque hodie feuda dantur.

[34.]
[*V2 150.6* (*part 2*)]

Item si quis eo tenore de feudo aliquo sit investitus, 'ut in eo succedant feminae sicut masculi', sive feudum id ad certum fuerit datum servitium, sive pro eo indeterminate fuerit promissum servitium, investito moriente in feudum succedunt pariter et mares et feminae. Quamquam enim superstite masculo ex eo, qui primus feudum acquisivit, feminae excludantur, etsi in maribus et feminis fuerat acquisitum, ut in feudis regulariter tradi solet, sermonem tamen investiturae, nec non vim verborum et sensum contrahentium intuentes, discretionem sexus in eiusmodi feudi successione non fecimus.

[35.]
[*V2* 150.7]

Iugales a quodam milite simul de eodem feudo investiti fuerant, 'ut in se descendentesque suos id haberent'. Hi ex se filio et filia superstitibus defuncti sunt, inter quos feudi quaestio agitatur. Masculus enim universum feudum sibi vindicat, femina vero ad parentum feudum pariter cum fratre vocari se defendit. Quidam pro masculo, quidam pro femina pronuntiant. Eorum, qui pro filia iudicant, sententiam sequendam esse censeo, cum filia ex antedictorum iugalium contubernio superest, ex praedefuncta uxore alio suscepto masculo, qui consanguineus ad eam frater sit; in ceteris priorum sententia sane sequenda est. Quodsi sola ex eo matrimonio relicta filia, nullo ex eo vel alio connubio superstite masculo, ab hac luce subtracti fuerint, feudum scindi fert prudentum

[33.]
[*V2 150.6* (*part 1*) Cases in which a woman succeeds to a fief]

If a fief is given to a knight for a specific service, and he dies leaving a woman descending from him who could render that service according to the condition to which the fief is subject no less fittingly than a male would, even if in the investiture there is no provision as to the option that also women may aspire to it, we nonetheless think it right that she is admitted. In fact, some think that in this case she succeeds to the fief together with males. We have considered that this deserves all the more to be observed when a fief is given in such a way that no service is to be rendered for it, just as many fiefs are given today.

[34.]
[*V2 150.6* (*part 2*)]

Also, if anyone is invested with any fief on the terms that 'women are to succeed to it just as men', whether it is given in return for a specific service or service is indeterminately promised for it, when he who has been invested dies, men and women equally succeed to the fief. For although women should be excluded when a male descendant survives from him who first acquired the fief—even if it had been acquired [as inheritable] by both men and women, as is common, as a general rule, in transfers of fiefs—nonetheless, inspecting the wording of the investiture as well as the meaning of its words and the intention of the contracting parties, we have not made any distinction of sex in relation to the succession to such a fief.

[35.]
[*V2* 150.7]

Two spouses had been jointly invested with the same fief by a certain knight so that they would have it 'for themselves and their descendants'. They died with a son and a daughter surviving, between whom a case is raised over the fief because the male claims the entire fief for himself, but the woman defends herself [asserting] that she is to be called [to succeed] to their parents' fief equally with the brother. Some pronounce in favour of the male, some in favour of the woman. I consider that the opinion of those who judge in favour of the daughter should be followed when the daughter survives from the union of the aforementioned spouses, and another male child was born of a predeceased wife, and he is the daughter's brother by blood [i.e., born of the same father]. In other circumstances, the opinion of the former ones should be certainly followed. And if they [i.e. the spouses] are taken away from this earthly life with only a daughter left from that marriage and no surviving male from that or another union, the opinion

nostrae civitatis opinio, ut dimidiam quidem partem femina sibi acquirat, reliquam vero dominus aut eius heres accipiat.

[36.]
[*V2 150.8* De feudis habitationum]

Feuda habitationum, nisi aliud specialiter cautum sit, morte accipientium finiuntur.

[37.]
[*V2 150.9* Imperator Henricus]

Imperator Henricus.[1] Si contigerit feudum incuria aut fidelis neglectu consortibus applicari, nullum ex eo levamen detrusus excipiat, ne senioris sui contemtus illusus fiat, ob quem feudum iure dimiserat. Sane qui aliter fecerint, quam quod mens saluberrimae nostrae constitutionis exposcit, beneficio se carituros esse cognoscant, ita ut eis amplius sperare non liceat, seniori danda licentia tam ab ipsis eorumque posteris, quam ceteris detentoribus praedictum beneficium vendicandi.

[38.]
[*V2 150.10* Servos post delatam successionem manumissos in feudum non succedere]

Quaesitum scio dudumque apud prudentes fuisse causam hanc, si servi, quibus macula servitutis obstaculo fuerat, libertate donati fuerint, an ad feudi successionem valeant adspirare? Denique post magnas varietates obtinuit sententia distinguentium, quo tempore libertatis donum assecuti fuerint, ut, siquidem eo tempore, quo coheres alter, utpote his constitutis inhabilibus, aut dominus quasi ad se devolutum vindicasset, ab eius successione sint penitus alieni, ne, quod legitime factum est, superveniente facto postea retractetur; qui, si re integra manumissi fuerint, in feudum recte succedere queunt.

[1] *MGH, Constitutiones, i*, 105 (n. 57). *The document is ascribed to Henry III* (*1047–1056*)*, but the attribution is uncertain.*

of the experts of our city recommends that the fief be divided so that the woman is to acquire half of it for herself, whilst the lord or his heir is to receive the remaining half.

[36.]
[*V2 150.8* Concerning 'fiefs of habitation']

'Fiefs of habitation'[1], unless some other provision is specifically made, are concluded at the death of those who receive them.

[37.]
[*V2 150.9* Emperor Henry]

Emperor Henry. If it happens that a fief, by the carelessness or neglect of a vassal, is assigned to [the fief's] coheirs, the dispossessed man is not to receive any relief from it, lest the disdain of his lord, for which he had lawfully lost the fief, is made an object of ridicule. Indeed, they who behave differently from what the intention of our soundest constitution demands, are to know that they shall be deprived of the benefice so that they may not have further hope [for its recovery]. And the lord should be allowed to claim the aforesaid benefice from these ones and their offspring, as well as from anyone who is withholding it.

[38.]
[*V2 150.10* That slaves emancipated after successors
have been designated do not succeed to a fief]

I know that this case has formerly been discussed before the experts. If slaves, for whom the blot of slavery had been an impediment, are granted the gift of liberty, may they aspire to succession to a fief? After major disagreements, the opinion eventually prevailed of those who made a distinction as to the time when they have obtained the gift of liberty. If indeed [they have obtained it] when another coheir—suppose because these [i.e. the slaves] have been declared unsuitable—or the lord had [already] claimed it as it were to devolve to him, they are to be entirely excluded from succession to it, so that what has been legitimately done is not revoked by an act occurring subsequently. If they have been emancipated when the matter [of succession] was not decided yet, they are able to succeed to a fief rightfully.

[1] *A 'feudum habitationis' is a fief consisting in the right of dwelling in a place, or which is given on the agreement that the holder is to reside in the fief.*

[39.]
[*V2 150.11* Ut vasalli sumtibus domini servitia praestent]

Antiquatum esse ipsis rerum experimentis nos ipsi cognovimus, fideles, nisi aliud contractibus pactiones insertae desiderent, dominorum sumptibus eisdem servitia ministrare. Iustum namque est, ut illi consequantur stipendium, quo tempore suum commodare reperiuntur obsequium, praesertim cum nec quisquam propriis cogatur impendiis militare, maxime cum extra civitatis suae tentoria servitiis exhibendis eos convenit fatigari.

[40.]
[*V2 150.12* Gregorius septimus][1]

Gregorius septimus. Si quis imperator[um], regum, ducum, marchionum, comitum vel quarumlibet[2] saecularium potestatum aut personarum investituram episcopatuum vel alicuius ecclesiasticae dignitatis dare praesumpserit, ecclesiastica communione privetur.

[41.]
[*V2 150.13*][3]

Quoniam investituras contra sanctorum patrum auctoritatem a laicis ex multis partibus cognovimus fieri, et ex eo plurimas perturbationes in ecclesia, immo ruinam sanctae religionis oriri, ex quibus Christiana religio[4] conturbatur, decernimus, ut nullus clericorum investituras episcopatus, vel abbatiae, vel ecclesiae de manu imperatoris, vel regis, vel alicuius laicae personae, viri vel feminae, suscipiat. Quod si praesumpserint, recognoscant, investituram illam ab apostolica auctoritate irritam esse, et se usque ad dignam satisfactionem excommunicationi subiacere.

[1] *Decr. C. 16. q. 7 c. 12, par. 1, Gregory VII, (1080).* [2] *V2* quilibet. [3] *Decr. C. 16 q. 7 c. 13, Gregory VII (1078).* [4] *I follow here V2. V1* ex quibus censuris religio.

[39.]
[*V2 150.11* That vassals provide services at the lord's expense]

We ourselves have gathered, based on our experience with these matters, that it has long been the case that vassals provide services to their lords at the latter's expenses unless agreements inserted in their contracts would require otherwise. It is indeed just that they obtain reward when they are found to offer their due services, especially since no one is to be obliged to render military support at their own expenses, least of all when it is arranged that they exert themselves by performing service outside the territories of their cities.[1]

[40.]
[*V2 150.12* Gregory the seventh]

[Pope] Gregory the seventh. If any emperor, king, duke, marquess, count, or any secular power or person presume to give investiture of bishoprics or any other ecclesiastical office, he should be deprived of the communion of the Church.[2]

[41.]
[*V2 150.13*]

Since we have gathered from many quarters that, contrary to the authority of the Holy Fathers, investitures are made by lay persons and, from this, many disturbances arise in the church, and even the ruin of holy religion, whereby the Christian religion is confounded,[3] we decree that no cleric is to receive investiture of a bishopric, or an abbey, or a church from the hand of the emperor, or the king, or any other layperson, whether men or women. And if they presume to do so, they are to know that, by Apostolic authority, that investiture is made invalid, and they will undergo excommunication until appropriate satisfaction [has been made].

[1] *Since it seems likely that 'tentoria'* ('*military camps*') *derives from a misreading of 'territoria', I have translated the latter. A literal translation would be: 'outside the camps of their cities'.* [2] *I.e., be excommunicated.* [3] *According to V1, the translation would be 'and from these judgments* (*!*) [*our*] *religion is confounded'. Decr. C. 16 q. 7 c. 13: 'ex quibus Christianae censurae religio'* ('*from which faith in the Christian judgment is confounded*').

[41bis.]
[*V2 150.14*][1]

Si quis clericus, abbas, vel monachus per laicos ecclesias obtinuerit, excommunicationi subiaceat.

[42.]
[*V2 150.15*][2]

Constitutiones sanctorum canonum sequentes statuimus, ut quicunque clericorum ab hac hora investituram ecclesiae vel ecclesiasticae dignitatis de manu laici acceperit, et qui[3] ei manum imposuerit, gradus sui periculo subiaceat et communione privetur.

[43.]
[*V2 150.16*][4]

Maius est possessionem dare, quam sit investituram concedere.

[44.]
[*V2 150.17* Vasallum feudum posse in alium arctiori lege transferre]

Nulla iuris constitutione aut consuetudinis ususque longaevi observantia prohiberi sciscitatus invenio, vasallum arctiori, quam ipse habeat, lege feudum in alium ubilibet posse transferre.

[45.]
[*V2 150.18*][5]

Longinquitate temporis fit saepe, ut non pateat conditio originis, unde iam statutum est, ut professionem suam liberti ecclesiae debeant facere, qua profiteantur, se et de familia ecclesiae esse et eius obsequium nunquam relicturos. His quoque adiicimus, ut, quoties cursum vitae sacerdos impleverit, et de hac vita migraverit, mox cum successor eius advenerit, omnes liberti ecclesiae vel ab eis progeniti chartulas suas in conspectu

[1] *Decr. C. 16 q. 7 c. 16, Paschal II, 1107.* [2] *Decr. C. 16 q. 7 c. 17, Paschal II, 1107.* [3] *V2* et ipse, et qui. [4] *Decr. C. 16 q. 2 c. 1, par. 1.* [5] *Decr. C. 12 q. 2 c. 64: Third Council of Toledo, 589.*

[41bis.]
[*V2 150.14*]

If any cleric, abbot, or monk obtains churches by laypersons, he is to undergo excommunication.

[42.]
[*V2 150.15*]

Following the provisions of the holy canons, we establish that any cleric who, henceforth, receives investiture of a church or an ecclesiastical office from the hand of a layperson, and the person who laid his hand on him,[1] shall be liable to demotion in rank and be deprived of communion.[2]

[43.]
[*V2 150.16*]

To give possession constitutes a greater right than to grant an investiture.

[44.]
[*V2 150.17* That a vassal may transfer a fief
to another under a stricter condition]

After investigating this matter, I find that it is not prohibited by any provision of the law or by the observance of custom and long-standing usage that a vassal may transfer anywhere a fief to another under a stricter condition than the one under which he has it.

[45.]
[*V2 150.18*]

Due to the lapse of time, it often happens that [someone's] original condition is not clear. Hence, it has been previously decreed that the freed slaves of a church ought to make a public promise, by which they are to profess themselves to belong to the dependents of that church and that they will never leave its service. To this, we add that whenever a priest concludes his course of life and departs from this life, as soon as his successor arrives, all the freed slaves of that church and they who are born of them

[1] *In the ritual of investiture.* [2] *I.e., be excommunicated.*

omnium debent ipsi, qui substituitur, pontifici publicare, et professionem in conspectu ecclesiae renovare, quatenus status sui vigorem illi obtineant, et oboedientia eorum ecclesia non careat. Sin autem scripturas libertatis suae intra annum ordinationis novi pontificis manifestare contempserint, aut professiones renovare noluerint, vacuae et inanes chartulae ipsae remaneant, et illi, origini suae redditi, sint perpetuo servi.

[46.]
[*V2 150.19*][1]

Liberti ecclesiae, quia nunquam eorum moritur patrona, a patrocinio ecclesiae nunquam discedant, nec posteritas quidem eorum, sicut priores canones decreverunt. Ac ne forte libertinitas eorum in futura prole non pateat, ipsa quoque[2] posteritas se ab ecclesiae patrocinio non subtrahat, necesse est, ut tam iidem liberti quam eius progeniti[3] professionem episcopo suo faciant, per quam ex familia ecclesiae libertos se esse fateantur; eius[4] patrocinium non relinquant, sed iuxta virtutem suam obsequium ei vel obedientiam praebeant.

[47.]
[*V2 150.20*][5]

Quicunque fidelium propria devotione de facultatibus suis aliquid ecclesiae contulerunt, si forte ipsi aut filii eorum redacti fuerint ad inopiam, ab eadem ecclesia suffragium vitae temporis usu percipiant.

[48.]
[*V2 150.21* Clericatu feudum amitti][6]

Et iure et moribus receptum est, vasallum clericali se militiae dedicantem feudum amittere. Scriptum est enim in divinis eloquiis: ‘Miles Christi serviat Christo, milites saeculi serviant saeculo’.[7]

[1] *Decr. C. 12 q. 2 c. 65: Third Council of Toledo, 589.* [2] *V2* ipsaque. [3] *V2* ab eis progeniti. [4] *V2* eiusque. [5] *Decr. C. 16 q. 7 c. 30: Fourth Council of Toledo, 633.* [6] *Decr. C. 23 q. 8 c. 19: ‘breve’ by Pope Nicholas I (858–867).* [7] *Ref. to St Paul’s second letter to Timothy (2 Timothy, 2:3–4).*

ought to show, in the sight of all, their charters[1] to the priest who has filled his place, and renew the public promise before the church, so that they obtain validation of their status and the church is not deprived of their obedience. If, however, they avoid exhibiting the writings attesting to their liberation within a year of the ordination of the new priest or refuse to renew their public promises, those charters are to remain null and void and they, being returned to their original status, are to be slaves forever.

[46.]
[*V2 150.19*]

The freed slaves of a church, since their patron [church] never dies, are to never depart from the patronage of the church, nor indeed are their descendants, just as earlier canons have established. To prevent the possibility that their status of freed slaves becomes unclear in future generations, and also that those descendants withdraw themselves from the patronage of the church, it is necessary that both the freed slaves themselves and those born of them make a public promise to their bishop, through which they are to declare that they are freed slaves belonging to the dependents of that church. And they are not to abandon its patronage, but offer service and obedience to it, according to their capacity.

[47.]
[*V2 150.20*]

If any believers have out of their devotion bestowed upon a church anything of their assets, and if they or their sons by chance have been reduced to poverty, by usage they are to receive support from the same church for the duration of their lives.

[48.]
[*V2 150.21* That a fief is lost by taking clerical service]

It is accepted by law and by practice that a vassal who devotes himself to the army of the clergy loses his fief, for it is written in the Holy Scriptures that a soldier of Christ is to serve Christ, soldiers of the secular world are to serve the secular world.

[1] *I.e., charters of emancipation.*

[49.]
[*V2 150.22*][1]

Si quis episcopus, saecularibus potestatibus usus, ecclesias pro ipsis obtinuerit, deponatur et segregetur, omnesque, qui illi communicant.

[50.]
[*V2 150.23*][2]

Illud per omnia interdicimus, ut nullus clericus praebendam suam seu beneficium aliquod ecclesiasticum aliquo modo alienare praesumat. Quod si praesumtum olim fuerit[3] vel aliquando fuerit, irritum erit, et ultioni canonicae subiacebit.

[51.]
[*V2 150.24*][4]

Quicunque militum vel cuiuscunque ordinis vel professionis persona praedia ecclesiastica a quocunque rege seu saeculari principe vel ab episcopis invitis seu abbatibus aut ab aliquibus ecclesiarum rectoribus suscepit,[5] vel invaserit, vel eorum consensu tenuerit, nisi eadem praedia ecclesiae restituat, excommunicationi subiaceat.

[52.]
[*V2 150.25*][6]

Si tributum petit imperator, non negamus: agri ecclesiae solvant tributum. Si agros ecclesiae desiderat imperator, potestatem habet vindicandorum, tollat eos, si libitum

[1] *Decr. C. 16 q. 7 c. 14.* [2] *Decr. C. 12 q. 2 c. 37, par. 1: Pope Urban II (1088–1099).* [3] *Decr.* fuit. [4] *Decr. C. 12 q. 2 c. 4: Pope Gregory VII (1078).* [5] *V2* susceperit. [6] *Decr. C. 11 q. 1 c. 27: Ambrosius (d. 397), 'Contra Auxentium'. V1 and V2 failed to notice that the second part ('quia non ecclesia' etc.) is a misread excerpt from Decr. C. 23 q. 8 c. 22.*

[49.]
[*V2 150.22*]

If any bishop enjoying the friendship of secular powers obtains churches on their behalf, he is to be deposed and banished, and so anyone who associates with him.

[50.]
[*V2 150.23*]

In all respects, we forbid that any cleric presume to alienate in any way his prebend or any ecclesiastical benefice; and if he has presumed in the past, or presumes at any time, [to do so], it shall be void, and he shall undergo canonical punishment.

[51.]
[*V2 150.24*]

Any knight, or any person belonging to any class or profession, who receives ecclesiastical lands from any king or secular prince, or from bishops or abbots or other holders of churches[1] against their will, or if he seizes those lands, or holds them with their consent [i.e., of secular princes],[2] is to undergo excommunication unless he restores those lands to the church.

[52.]
[*V2 150.25*]

If the emperor demands a tribute, we do not deny it: the lands of the church are to pay the tribute. If the emperor desires the lands of the church, he has the power to claim them, he may take them if it pleases him. I do not give [them] to the emperor, but

[1] *'Rector ecclesiae': an ecclesiastical person put in charge of the guidance and administration of a church.* [2] *This sentence is ambiguous, as it is unclear to whose consent the text refers. According to some traditions, e.g., Corpus Juris Canonici emendatum et notis illustratum. Gregorii XIII. pont. max. iussu editum* (In aedibus Populi Romani; Romae, 1582), i, 1307–1308, *the Latin text would be: 'vel de rectorum depravato seu vitioso consensu tenuerit'* (*'or hold them with the corrupted or vicious consent of the holders* [*of the churches*]*'*). *This variant would fit with the context; the reference edition of the Decretum* (*ed. Leipzig, 1879; repr. Graz, 1959*)*, however, offers the same text as the one transmitted in V1 and V2.*

est. Imperatori non do, sed non nego, quia non ecclesia dari imperatori, non pontificalis apex more capitis ecclesiae praeminens potest subiici regibus.

[53.]
[*V2 150.26*][1]

De his, quae clerici emerint vel vivorum donationibus acceperint, consueta principibus debent obsequia, ut et annua eis persolvant tributa et vocato exercitu cum eis, consensu tamen Romani pontificis, proficiscantur ad castra.

[1] *Decr. C. 23 q. 8 c. 25: dictum Gratiani.*

neither do I refuse them [to him]—because the church cannot be given to the emperor, nor can the pontifical highness, superior by the custom of the head of the church, be subjected to kings.[1]

[53.]
[*V2 150.26*]

Concerning those [properties] which clerics buy, or receive by donations of the living, they owe customary services to princes, so that they are to pay them annual tributes and, once the army has been summoned, they are to set out with them for the military camps, with the consent, however, of the Roman pontiff.

[1] *This chapter combines two texts from the Decretum, with the second one being misread, and provides therefore a confusing outcome. The first one ends at 'sed non nego', and its translation does not present any particular issue. The second one is an extract from C. 23 q. 8 c. 22, with reference to Matthew (17:24–27): 'Tributum in ore piscis, piscante Petro, inventum est; quia de exterioribus suis, que palam cunctis apparent, tributum ecclesia reddit. Non autem totum piscem dare iussus est, sed tantum staterem, qui in ore eius inuentus est, quia non ecclesia dari imperatori, non pontificalis apex, qui in ore capitis ecclesiae preminet, subici regibus potest'. ('A tribute was found in the mouth of a fish, while Peter was fishing. Since this tribute comes from outside the fish, which is plainly apparent to everyone, the church pays it. However, the command is to give not the whole fish but only the silver coin that was found in its mouth: because the church cannot be given to the emperor, nor can the pontifical highness, which rises above the mouth of the church's head, be subjected to kings'). In the chapter translated here, there is an evident misreading of 'more' ('by the custom') for the original 'in ore' ('in the mouth'), which distorts the overall meaning of the text but makes it fit, somehow, with the first part of this chapter.*

APPENDIX 2

# *Capitula Extraordinaria Baraterii*

[1.]
[*Bar., tit.* I *c. 3*]

Beneficium intelligitur quasi ex bono praeterito vel praesenti vel futuro facto et licito, et generaliter habet in se servitium et fidelitatem; nisi ex pacto excipiatur, ut fit saepius. De fidelitate autem sapientes aliter opinantur. Respiciunt autem ad personam dantis vel recipientis beneficium, vel ad beneficii quantitatem. Si enim dominus et vasallus nunquam de fidelitate cogitavit, pro nimia parvitate beneficii, quis unquam contradixit?

[2.]
[*Bar., tit.* IV *c. 7*]

Beneficium paternum sive hereditarium intelligitur feudum patris vel proavi, usque ad infinitum.

[3.]
[*Bar., tit.* VI *c. 4*]

Beneficium intelligitur investitura cum traditione. Ex quo ita fit, ut, si quis primo investiatur re nondum tradita, ille, cui posterior investitura cum traditione facta fuerit, potior habeatur.

[4.]
[*Bar., tit.* VIII *c. 33*]

Si uni propter propriam culpam feudum abdicatum[1] fuerit, aliis non nocet, nisi ad tempus, id est donec heredes illius inculpati fuerint.

[1] *V2* abiudicatum.

APPENDIX 2

# Supplementary chapters by Baraterius

[1.]
[*Bar., tit.* I *c. 3*]

'Benefice' is understood [to derive] in some way from a good and lawful act, whether past, present, or future, and it generally involves the provision of service and fealty—unless an exception is made by agreement, as is very often done. Concerning fealty, however, the experts have a different opinion. They also pay attention to the person who gives or receives the benefice and to the size of the benefice: for if neither the lord nor the vassal has ever considered [an oath of] fealty because the benefice is too small,[1] who has ever objected to that?

[2.]
[*Bar., tit.* IV *c. 7*]

An 'ancestral' or 'hereditary' benefice is understood to be a fief that belonged to the father or a previous ancestor ad infinitum.

[3.]
[*Bar., tit.* VI *c. 4*]

A benefice is understood to be an investiture with a transfer of possession. Hence, it so comes about that, if anyone is first invested and the property has not yet been transferred, a person to whom a later investiture has been made with a transfer of possession is considered to be in a stronger position.

[4.]
[*Bar., tit.* VIII *c. 33*]

If a fief has been taken from anyone because of his own fault, this does not harm others,[2] except temporarily—that is, as long as there are heirs of the one who was proved guilty.

[1] *Lit., because of the excessive smallness of the benefice.* [2] *I.e., coheirs or fellow fief-holders.*

[5.]
[*Bar., tit. XII c. 8*]

Si quis nominatim de beneficio alicuius militis investiatur, inutilis est investitura, quia inde occultum et nequissimum homicidium posset oriri et periurium et alia nefanda evenire possent. Unde et si de beneficio alicuius,[1] 'cum primo apertum fuerit', aliquis investiatur, cum propter hoc magis occulte malitia perpetrari possit, magis inutilis est investitura.

[6.]
[*Bar., tit. XIII c. 20*]

Si unus vasallus domino refutaverit, non praeiudicat ceteris.

[7.]
[*Bar., tit. XV c. 13*]

Illud quoque curialis usus memoriae tradere curavimus, ut, si qualiscunque controversia inter dominum et vasallum fuerit, et exinde dominus ad suos milites conquestus fuerit, tunc pares curiam faciant, et ex se ipsis legatos primo, secundo et tertio suo pari dirigant, tribus dilationibus datis, quarum prima quindecim dierum intercapedinem habeat, secunda triginta, tertia quadraginta; et eo non veniente, nec idoneam excusationem faciente, tunc pares dominum possessorem faciant, salvis beneficiis. Pari ratione salva profecto ratio intelligatur, si certis excusationibus suam contumeliam intra annum purgaverit. Et si quidem veniens se excusare non potuerit, hoc domino laudatione parium emendet, et possessionem beneficii accipiat, et iustitiam, prout res exigit, domino laudatione parium faciat.

[8.]
[*Bar., tit. XV c. 14*]

Si de allodio aliaque re extra beneficium inter dominum et vasallum contentio fuerit, tunc pares ad iudicem legis, vel alibi, id est, ad arbitros mittant eos. Sed si de proprio beneficio, sua sententia dirimant. Similiter si dominum offensum habuerit, sua sen-

[1] *V2 omits* alicuius.

[5.]
[*Bar., tit.* XII *c. 8*]

If anyone is expressly invested with a benefice of some other knight, the investiture is ineffective because covert and most depraved murder could arise from this, and perjury, as well as other abominable actions, could result. And, consequently, if someone is invested with a benefice 'as soon as it becomes vacant', since for this reason cruelty might be perpetrated even more covertly, the investiture is even more so ineffective.

[6.]
[*Bar., tit.* XIII *c. 20*]

If one vassal renounces [his fief] to his lord, this does not prejudice others.[1]

[7.]
[*Bar., tit.* XV *c. 13*]

We have taken care to commit to memory also this 'curialis usus'.[2] If there is any kind of dispute between a lord and a vassal, and, as a result, the lord brings a complaint before his knights, then the [vassal's] peers are to hold court and send messengers, from among themselves, to their [accused] peer a first, a second, and a third time. After three deferrals have been allowed—the first of which is to allow an interval of fifteen days, the second thirty, the third forty—if he does not appear nor gives an appropriate excuse, then the peers are to make the lord the possessor, without prejudice to [the rights inherent to] benefices. For the same reason, the [vassal's] argument is to be considered utterly unaffected if he purges his fault with proven excuses within a year. But if he appears and cannot justify himself, he is to compensate the lord according to the judgment of his peers, then receive possession of the benefice, and do justice to the lord, as the case requires, by the judgment of his peers.

[8.]
[*Bar., tit.* XV *c. 14*]

If there is a dispute between a lord and a vassal over an allod or another property other than a benefice, then the peers are to send them to a judge of the law, or elsewhere—i.e. to arbitrators. But if [the dispute concerns] a proper benefice, [peers] are to resolve it by their judgment. Similarly, if [the vassal] has committed an offence against the lord,

[1] *I.e., coheirs and fellow fief-holders.* [2] *For 'curialis usus' or 'usus curialis', see Glossary.*

tentia dirimant. Si inter duos vasallos, tunc domini cognitio est. Et si vasallus spernit ad iudices ire, pares per feudum constringant vasallum, dantes domino beneficii possessionem.

[the peers] are to resolve the dispute by their judgment. If [the dispute is] between two vassals, then the lord has to take cognisance. And if the vassal disdains to go before the judges, the peers should compel the vassal through his fief, giving the lord possession of the benefice.

APPENDIX 3

# *Edictum de beneficiis Regni Italici*

In[1] nomine sanctę et individuę Trinitatis. Chuonradus gratia Dei Romanorum imperator augustus.

Omnibus sanctę Dei ecclesię fidelibus et nostris tam presentibus quam et futuris notum esse volumus, quod nos ad reconciliandos animos seniorum et militum, ut adinvicem semper inveniantur concordes et ut fideliter et perseveranter nobis et suis senioribus serviant devote, precipimus et firmiter statuimus: ut nullus miles episcoporum, abbatum, abbatissarum aut marchionum vel comitum vel omnium, qui benefitium de nostris publicis bonis aut de ecclesiarum prediis tenet nunc aut tenuerit vel hactenus iniuste perdidit, tam de nostris maioribus valvasoribus quam et eorum militibus, sine certa et convicta culpa suum beneficium perdat, nisi secundum constitucionem antecessorum nostrorum et iudicium parium suorum.

Si contentio emerserit inter seniores et milites, quamvis pares adiudicaverint, illum suo beneficio carere debere, et si ille dixerit, hoc iniuste vel odio factum esse, ipse suum beneficium teneat, donec senior et ille quem culpat cum paribus suis ante nostram presentiam veniant, et ibi causa iuste finiatur. Si autem pares culpati in iudicio senioribus defecerint, ille qui culpatur suum beneficium teneat, donec ipse cum suo seniore et paribus ante nostram presentiam veniant. Senior autem aut miles qui culpatur, qui ad nos venire decreverit, sex ebdomadas ante quam iter incipiat, ei cum quo litigatur innotescat. Hoc autem de maioribus valvasoribus observetur. De minoribus vero in regno aut ante seniores aut ante nostrum missum eorum causa finiatur.

Precipimus etiam, ut cum aliquis miles sive de maioribus sive de minoribus de hoc seculo migraverit, filius eius beneficium habeat. Si vero filium non habuerit et abiaticum ex masculo filio reliquerit, pari modo beneficium habeat, servato usu maiorum valvasorum in dandis equis et armis suis senioribus. Si forte abiaticum ex filio non reliquerit et fratrem legittimum ex parte patris habuerit, si seniorem offensum habuit et sibi vult satisfacere et miles eius effici, beneficium quod patris sui fuit habeat.

[1] *MGH, Constitutiones*, i, 89–91 (n. 45); *MGH, Conradi II. Diplomata*, ed. Harry Bresslau (Diplomatum regum et imperatorum Germaniae, iv; Hannover/Leipzig, 1909), 335–337 (n. 244): 28 May 1037, Milan.

APPENDIX 3

# [Conrad II's] edict on benefices in the Italian Kingdom

In the name of the holy and indivisible Trinity, Conrad [II], by the grace of God the august emperor of the Romans.

We wish it to be known by all the faithful people of the Holy Church of God and ours, both present and future, that, in order to reconcile the spirits of lords and knights, so that they shall always be seen to be in concord, and that they devotedly serve us and their lords with loyalty and perseverance, we command and firmly establish: that no knight of bishops, abbots, abbesses, or marquesses, or counts, or of anyone else, who now holds a benefice from our public property or from the estates of churches, or will hold it, or has up to now lost it unjustly, regardless of whether this concerns our greater 'valvasores' or their knights, is to lose his benefice without a proven and demonstrated fault but only according to the disposition of our predecessors and the judgment of his peers.

If a dispute arises between lords and knights, even if the peers judge that the latter ought to be deprived of the benefice, if he says that this has been done unjustly or out of hatred, he is to hold his benefice until the lord and he who is accused[1] come with his peers before our presence, and here the case is to be determined justly. However, if the peers of the accused fail [to support] the lords in judgment, he who is accused is to hold his benefice until he comes before our presence with his lord and peers. The lord, however, or the knight who is accused, who decides to come to us, is to notify him with whom he is disputing six weeks before the journey begins. This, however, is to be observed concerning the greater 'valvasores'. But concerning the lesser ['valvasores'] in the kingdom, their case is to be determined either before the lords or before our representative.

We also command that, when any knight, whether from among the greater or the lesser, departs from this earthly life, the son is to have his benefice. But if he has no son and leaves a grandson born of his son, he is to have it in the same way, as long as the usage of the greater 'valvasores' of giving horses and arms to their lords is observed. If he does not happen to leave a grandson born of his son and has a legitimate brother from his father's side, and if [this brother] has committed an offence against the lord and wishes to make amends and be made his knight, he is to have the benefice that was his father's.

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[1] *1 Lit*. he whom he accuses.

Insuper etiam omnibus modis prohihemus, ut nullus senior de beneficio suorum militum cambium aut precariam aut libellum sine eorum consensu facere presumat. Illa vero bona, que tenent proprietario iure aut per precepta aut per rectum libellum sive per precariam, nemo iniuste eos divestire audeat.

Fodrum de castęllis, quod nostri antecessores habuerunt, habere volumus. Illud vero, quod non habuerunt, nullo modo exigimus.

Si quis hanc iussionem infregerit, auri libras centum componat, medietatem kamerę nostrę et medietatem illi cui dampnum illatum est.

Signum domni Chuonradi serenissimi Romanorum imperatoris augusti.

Kadolohus cancellarius vice Herimanni archicancellarii recognovit.

Datum .v. Kal. Iunii, indic. .v., anno dominicę incarnacionis millesimo .xxxviii.

Anno autem domni Chuonradi regis .xiii., imperii .xi.

Actum in obsidione Mediolani; feliciter amen.

Moreover, we also prohibit in any way that any lord presumes to make an exchange, or to grant a 'precaria'[1] or a lease, out of his knights' benefice without their consent. Indeed, no one is to dare despoil unjustly those goods which they hold by proprietary right, or through a grant,[2] or rightful lease or 'precaria'.

We want to have the 'fodrum'[3] from the castles which our predecessors had, but in no way do we demand that which they did not have.

If anyone breaches this command, he is to pay one hundred pounds of gold, one half to our treasury and one half to him to whom damage was inflicted.

The mark of the lord Conrad, most serene and august emperor of the Romans.

Chancellor Cadolus acknowledged [this] in lieu of Archchancellor Hermann.

Given on the fifth day of the Kalends of June <28 May>, the fifth indiction, in the year of the Lord's incarnation 1037, the thirteenth year of Lord Conrad as king, the eleventh of [his] empire.

Done at the siege of Milan, with good auspices, amen.

[1] *For 'precaria', see Glossary.* [2] *For this interpretation of 'per precepta', see*: H. Keller, 'Das Edictum', 247. [3] *For 'fodrum', see Glossary.*

APPENDIX 4

# Synoptic Table

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant.[1]

| **Incipit** | ***V1*** | ***V2*** | ***Ant.*** | |
|---|---|---|---|---|
| | **Incipiunt consuetudines feudorum [Feudorum libri liber primus]** | | **De feudis** | |
| | *De his qui feudum dare possunt et qualiter acquiratur et retineatur* | | *Quibus modis feudum adquiritur et retinetur* | |
| *Quia de feudis* | 1.1 | 1.1 | I.1 | **Ant. tract A** |
| *Quia vidimus* | 1.1.1 | 1.1.1 | I.2[2] | |
| *Cum vero Conradus* | id. | 1.1.2 | id. | |
| *Sin autem unus* | id. | 1.1.3 | id. | |
| *Hoc autem notandum est* | 1.1.2 | 1.1.4 | id. | |
| *Hoc quoque sciendum est* | 1.1.3 | 1.1.5 | I.3 | |
| *Notandum est autem* | 1.1.4 | 1.1.6 | I.4 | |
| | *De feudo guardiae vel gastaldiae* | | | |
| *Item illud, quod datur* | 1.2pr. | 1.2pr. | I.4.1 | |
| *Si vero gastaldi* | 1.2.1 | 1.2.1 | id. | |
| | *Qui successores [feudum dare] teneantur* | | | |
| *Si vero archiepiscopus* | 1.3pr. | 1.3pr. | I.5 | |
| *Laici vero* | 1.3.1 | 1.3.1 | I.6 | |
| | *De controversia investiturae* | *Si de investitura feudi controversia fuerit* | | |
| *Si autem controversia* | 1.4pr. | 1.4pr. | I.6.1 | |
| *Si vero fuerit in possessione* | id. | 1.4.1 | id. | |
| *Si vero feudum* | 1.4.1 | 1.4.2 | I.6.2 | |
| *Cum autem quis dixerit* | 1.4.2 | 1.4.3 | I.6.3 | |

1 Minor divergences between V1 and V2 are reported in square brackets; more relevant divergences are either footnoted or reported in split cells. Divergences within Ant., especially concerning tracts C2 and D, are footnoted.

2 Et quia.

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TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| **Incipit** | ***V1*** | ***V2*** | ***Ant.*** | |
|---|---|---|---|---|
| *Item si vasallus* | 1.4.3 | 1.4.4 | I.6.4[3] | **Ant. tract A** |
| *Similiter si aliquis* | 1.4.4 | 1.4.5 | I.6.5 | |
| *Si quis de manso uno* | 1.4.5 | 1.4.6 | I.7 | |
| *Rursus si aliquis* | 1.4.6 | 1.4.7 | I.7.1 | |
| | *Quibus modis feudum amittatur* | | *Qualiter feudum amittatur* | |
| *Quia supra dictum est* | 1.5pr. | 1.5pr. | IIpr. | |
| *Item si fidelis* | 1.5.1 | 1.5.1 | II.1 | |
| *Similiter si dominus* | 1.5.2 | 1.5.2 | id. | |
| *Item si fratrem* | 1.5.3 | 1.5.3 | id. | |
| *Aut si libellario nomine* | 1.5.4 | 1.5.4 | id. | |
| *His omnibus* | 1.5.5 | 1.5.5 | id. | |
| *Rursus si fidelis* | 1.5.6 | 1.5.6 | II.2 | |
| *Praeterea si ille* | 1.5.7 | 1.5.7 | II.3 | |
| *Item si fuerint duo fratres* | 1.5.8 | 1.5.8 | II.4 | |
| *Item si quis feudum* | 1.5.9 | 1.5.9 | II.5 | |
| | *Episcopum vel abbatem vel abbatissam* [*vel dominus plebis*] *feudum dare non posse* | | | |
| *Item si episcopus* | 1.6pr. | 1.6pr. | II.6 | |
| *Idem iuris est* | 1.6.1 | 1.6.1 | II.7 | |
| *Quin etiam si quis* | 1.6.2 | 1.6.2 | II.8 | |
| *Mutus feudum* | 1.6.3 | 1.6.3 | II.9 | |
| *Et his omnibus* | 1.6.4 | 1.6.4 | II.10 | |
| | *De natura feudi* | | *De natura feudi* | **Ant. tract B** |
| *Natura feudi haec est* | 1.7pr. | 1.7pr. | III | |
| *Idem est, si investitura* | 1.7.1 | 1.7.1 | id. | |
| | *De successione feudi* | | *De feudi successione* | |
| *Sequitur de successione* | 1.8pr. | 1.8pr. | IV.1 | |

3 Item si vasallus.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| **Incipit** | ***V1*** | ***V2*** | ***Ant.*** | | |
|---|---|---|---|---|---|
| *Hoc quoque observatur* | 1.8.1 | 1.8.1 | id. | | |
| | *Hic potest esse titulus qui successores teneantur* | *Qui successores teneantur* | | | **Ant. Tract B** |
| *Si quis investitus fuerit* | 1.9 | 1.9 | IV.2 | | |
| | *De contentione inter dominum et vasallum de investitura feudi* | | *De contentione feudi* | | |
| *Si fuerit contentio inter dominum* | 1.10pr. | 1.10 | V.1 | | |
| | | *De pignore dato feudo quid iuris sit* | | | |
| *Similiter si quis voluerit* | 1.10.1 | 1.11 | V.1.1 | | |
| | *De contentione inter me et dominum de portione feudi fratris mei* [*defuncti*] | | | | |
| *Si contentio fuerit inter me* | 1.11 | 1.12 | V.2 | | |
| | *De alienatione feudi* | | | | |
| *Si clientulus voluerit* | 1.12pr. | 1.13pr. | V.3 | | |
| *In feudo comitatus* | 1.12.1 | 1.13.1[4] | V.3.1 | | |
| | *De feudo marchiae, ducatus et comitatus* | | *Qualiter usus beneficii tenendus sit* | | **Ant. tract C2** |
| *De marchia vel ducatu* | 1.13pr. | 1.14pr. | VI.1 | VI.1 | |
| *Si capitanei vel valvasores* | 1.13.1 | 1.14.1 | VI.2 | VI.2 | |
| *Si duo fratres simul* | 1.13.2 | 1.14.2 | VI.3 | VI.3 | |
| | *An maritus succedat uxori in beneficium* | | | | |
| *Si femina habens beneficium* | 1.14 | 1.15 | VI.4[5] | VI.4[6] | |
| | *De feudis datis minimis valvasoribus* [*quid iuris sit*] | | | | |
| *Si minores valvasores* | 1.15 | 1.16 | VI.4.1 | VI.4.1 | |

4 Item in feudo comitatus.
5 Si femina beneficium habens.
6 Si femina maritum et beneficium.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| Incipit | *V1* | *V2* | *Ant.* | | |
|---|---|---|---|---|---|
| | *Quibus modis feudum amittatur* | | | | |
| *Si capitanei vel maiores* | 1.16 | 1.17 | VI.5[7] | VI.5 | **Ant. tract C2** |
| | *Apud quem vel quos controversia feudi definiri debeat [definiatur]* | | | | |
| *Si contentio fuerit de beneficio* | 1.17 | 1.18 | id.[8] | id. | |
| *Si aliqius de capitaneis* | id. | id. | VI.6[9] | VI.6 | |
| | *Constitutiones feudales domini Lotharii imperatoris* | | | | **Ant. tract D** |
| *Si quis ex militum ordine* | 1.18pr. | 1.19pr. | VI.7 | VI.7 | |
| *Si quis miles mortuus* | 1.18.1 | 1.19.1 | VI.8 | VI.8 | |
| | *De beneficio fratris et qualiter frater (fratri) in feudum succedat* | | | | |
| *Si quis acquisierit beneficium* | 1.19 | 1.20 | VI.9[10] | VI.9 | |
| | *De feudo sine culpa non amittendo* | | | | |
| *Sancimus ut nemo miles sine* | 1.20pr. | 1.21pr. | VI.10[11] | VI.10 | |
| *Si quis miles beneficium suum* | 1.20.1 | 1.21.1 | VI.11[12] | VI.11 | |
| | *Quo tempore miles investituram petere debeat* | | | | |
| *Sancimus ut nemo miles ultra* | 1.21pr. | 1.22pr. | VI.12 | id. | |
| *Si quis fecerit investituram* | 1.21.1 | 1.22.1 | VI.13 | id. | |
| *Sancimus ut nemo miles eiiciatur* | 1.21.2 | 1.22.2[13] | VI.14[14] | VI.12 | |

7 *Tit.* Quibus modis amittantur beneficia.
8 Et si intentio.
9 *Tit.* Qualiter alienationes militum evacuari debent.
10 Defuncti igitur quicunque.
11 Nos ita constituimus.
12 Nos precipimus, si miles.
13 Sancimus ut nemo miles adimatur.
14 Nemo miles eiiciatur.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| **Incipit** | ***V1*** | ***V2*** | ***Ant.*** | | |
|---|---|---|---|---|---|
| | *De contentione inter dominum et vasallum de investiture [feudi]* | | | | **Ant. tract D** |
| *Si quis miles in possessione* | 1.22 | 1.23 | VI.15[15] | VI.13 | |
| | *Quemadmodum feudum ad filiam pertineat* | | | | |
| *Si quis sine filio masculo* | 1.23 | 1.24 | VI.16 | VI.14 | |
| | *Quibus modis feudum constitui potest* | | *Quibus modis feudum constitui potest* | | **Ant. tract E** |
| *Sciendum est, feudum* | 1.24pr. | 1.25pr. | VII.1 | VII.1 | |
| *Si dominus, qui investivit* | 1.24.1 | 1.25.1 | VII.2 | VII.2 | |
| | *Si de investitura inter dominum et vasallum lis oriatur* | | | | |
| *Si inter dominum et vasallum* | 1.25pr. | 1.26pr. | VII.3 | VII.3 | |
| *Et si testes sacramento* | 1.25.1 | 1.26.1 | VII.3.1 | | |
| *Si quis se vel patrem suum* | 1.25.2 | 1.26.2 | VII.4 | | |
| *Si autem aliquis in possessione* | 1.25.3 | 1.26.3 | VII.5 | | |
| | *De feudo dato in vicem legis commissoriae [reprobando]* | | | | |
| *Si quis obligaverit aliquam rem* | 1.26pr. | 1.27pr. | VII.6 | | |
| *Si quis investierit aliquem* | 1.26.1 | 1.27.1 | VII.7 | | |
| | | *De usu Mediolanensium secundum quosdam* | | | |
| *Quidam obligaverat terram* | 1.26.2 | 1.28 | VII.8 | | |
| | **Explicit liber primus. Incipit secundus [Feudorum libri liber secundus]** | | | | |
| | *De feudi cognitione* | | *In quibus rebus feudum consistere possit* | | **Ant. tract F** |

15 Si miles fuerit in possessione.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| **Incipit** | ***V1*** | ***V2*** | ***Ant.*** | |
|---|---|---|---|---|
| *Obertus de Orto Anselmo* | 2.1pr. | 2.1pr. | VIII.1 | **Ant. tract F** |
| *Sciendum est itaque* | 2.1.1 | 2.1.1 | VIII.2 | |
| | *Quid sit investitura* | | | |
| *Investitura proprie quidem* | 2.2pr. | 2.2pr. | VIII.3 | |
| *Si vero vasallus* | 2.2.1 | 2.2.1 | VIII.4 | |
| *Praeterea si tenor* | 2.2.2 | 2.2.2 | VIII.4.1 | |
| *Item si vasallus pactum* | 2.2.3 | 2.2.3 | VIII.4.2 | |
| | *Per quos fiat investitura et per quos recipiatur* | | | |
| *Investitura autem aut de veteri* | 2.3pr. | 2.3pr. | VIII.5 | |
| *Personam vero investituram* | 2.3.1 | 2.3.1 | VIII.6 | |
| *Feminam quoque* | 2.3.2 | 2.3.2 | VIII.7 | |
| *Nulla autem investitura* | 2.3.3 | 2.3.3 | VIII.8 | |
| | *Quid praecedere debeat, utrum investitura an fidelitas* | | | |
| *Utrum autem investitura* | 2.4pr. | 2.4pr. | VIII.9 | |
| *Fidelitatem dicimus* | 2.4.1 | 2.4.1[16] | VIII.10 | |
| | *Qualiter vasallus iurare debeat fidelitatem* | | | |
| *Qualiter autem debeat iurare* | 2.5 | 2.5 | VIII.11 | |
| | *De forma fidelitatis* | | | [absunt] |
| *In epistola Philiberti episcopi* | 2.6 | 2.6 | [abest] | |
| | *De nova fidelitatis forma* | | | |
| *Est et alia de novo* | 2.7pr. | 2.7pr. | [abest] | |
| *Investitura vero facta* | 2.7.1 | 2.7.1 | VIII.12 | **Ant. tract F** |
| | *De investitura de re aliena facta* | | | |
| *Cum de re aliena* | 2.8pr. | 2.8pr. | VIII.13 | |
| *Rei autem per beneficium* | 2.8.1 | 2.8.1 | VIII.14 | |

16 Fidelitatem autem dicimus.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| **Incipit** | ***V1*** | ***V2*** | ***Ant.*** | |
|---|---|---|---|---|
| *Quid ergo si pretio* | id. | 2.8.2 | id. | **Ant. tract F** |
| *E contrario, si quid* | 2.8.2 | 2.8.3[17] | VIII.15 | |
| | *Qualiter olim feudum poterat alienari* | | | |
| *Est autem optima consuetudine* | 2.9pr. | 2.9pr. | VIII.15.1[18] | |
| *Necessitate namque suadente* | id. | 2.9.1 | id. | |
| *Si vero vel totum vel partem* | id. | 2.9.2 | id. | |
| *Donare autem aut pro anima* | id. | 2.9.3 | id. | |
| *De illa vero feudi alienatione* | 2.9.1 | 2.9.4 | VIII.15.2 | |
| | *Quis dicatur dux, marchio, comes sive capitaneus vel valvasor* | | | |
| *Qui a principe* | 2.10 | 2.10pr. | VIII.16 | |
| *Soldata autem* | id. | 2.10.1 | id. | |
| | *De gradibus succedendi in feudo* | *De successione fratrum vel gradibus succedentium in feudo* | | |
| *Per successionem quoque* | 2.11 | 2.11 | VIII.17 | |
| | *De fratribus de novo beneficio investitis* | | | |
| *Si duo fratres de novo beneficio* | 2.12pr. | 2.12pr. | VIII.18[19] | |
| *Si duo fratres in casa communi* | 2.12.1 | 2.12.1 | VIII.19[20] | |
| | *De investitura, quam Titius accepit a Sempronio* | | | |
| *A Sempronio talem* | 2.13 | 2.13 | VIII.20[21] | |

17 E contrario autem, si quid.
18 Est enim optima consuetudine.
19 Si duo fratres non de paterno.
20 Si duo fratres in casa communi.
21 Titius a Sempronio.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| **Incipit** | ***V1*** | ***V2*** | ***Ant.*** | |
|---|---|---|---|---|
| | *De vasallo decrepitae aetatis, qui beneficium refutavit, ut filii investirentur* | | | **Ant. tract F** |
| *Quidam vasallus* | 2.14 | 2.14 | VIII.21[22] | |
| | *De investitura in maritum facta* | | | |
| *Vasallus una tantum filia* | 2.15 | 2.15pr. | VIII.22[23] | |
| *Item placet, agnatum* | id. | 2.15.1 | id. | |
| | *De controversia feudi apud pares terminanda* | | | |
| *Si inter dominum et vasallum* | 2.16 | 2.16 | VIII.23 | |
| | *De eo, qui sibi et heredibus suis, masculis et feminis, investituram accepit* | | | |
| *Qui sibi vel heredibus suis* | 2.17 | 2.17 | VIII.24 | |
| | *De duobus fratribus a capitaneo investitis* | | | |
| *Duo fratres, Titius et Seius* | 2.18 | 2.18 | VIII.25 | |
| | *An removeri debeant testes qui pares esse desierunt* | | | |
| *Ex facto quaesitum esse scio* | 2.19 | 2.19 | VIII.26[24] | |
| | *De controversia inter episcopum et vasallum* | | | |
| *Ex eo, quod scriptum est* | 2.20 | 2.20pr. | VIII.27 | |
| *Sed si constiterit* | id. | 2.20.1 | id. | |
| | *De vasallo milite qui arma bellica deposuit* | | | |
| *Miles, qui beneficium tenebat* | 2.21 | 2.21 | VIII.28 | |
| | *De milite vasallo qui contumax est* | | | |
| *Dominus vocat militem* | 2.22pr. | 2.22pr. | VIII.29 | |
| *Si vero vasallus de domino* | 2.22.1 | 2.22.1 | VIII.29.1 | |

22 Quidam vasallus, cum esset.
23 Vasallus superstite una tantum filia.
24 Si inter dominum et fidelem de investitura.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| Incipit | *V1* | *V2* | *Ant.* | |
|---|---|---|---|---|
| | | | *Haec fecit Ugo de Gambolado …* | **Ant. tract C1** |
| *Qui de marchia* | [abest] | [abest] | IX.1 | |
| *Si capitanei vel valvassores* | [abest] | [abest] | IX.2 | |
| *Si duo fratres investiti* | [abest] | [abest] | IX.3 | |
| *Si contingerit, feminam* | [abest] | [abest] | IX.4 | |
| *Quoniam dictum est* | [abest] | [abest] | IX.5 | |
| | *In quibus causis feudum amittatur* | | *In quibus causis feudum amittatur* | **Ant. tract G** |
| *Obertus de Orto Anselmo* | 2.23 | 2.23pr. | X.1 | |
| *Imprimis illud te scire* | id. | 2.23.1 | id. | |
| | *Quae fuerit prima causa beneficii amittendi* | | | |
| *Prima autem causa* | 2.24pr. | 2.24pr. | X.2 | |
| *Est et alia ingratitudo* | 2.24.1 | 2.24.1 | X.2.1 | |
| *Item qui dominum suum* | 2.24.2 | 2.24.2 | X.2.2 | |
| *Praeterea si vasallus* | 2.24.3 | 2.24.3 | X.2.3 | |
| *Rursus si domini* | 2.24.4 | 2.24.4 | X.2.4[25] | |
| *Porro si dominum* | 2.24.5 | 2.24.5 | X.2.5 | |
| *Item qui domino suo* | 2.24.6 | id. | id. | |
| *Sed non est alia iustior* | id. | 2.24.6 | X.2.6 | |
| *Sed et qui delator* | 2.24.7 | 2.24.7[26] | X.2.7 | |
| *Praedictis modis beneficium* | 2.24.8 | 2.24.8 | X.2.8 | |
| *Sed quia natura* | id. | 2.24.9 | id. | |
| *Illud enim est certum* | id. | 2.24.10 | id. | |
| *Denique saepe quaesitum est* | 2.24.9 | 2.24.11 | X.2.9 | |
| *Si vasallus contra constitutionem* | 2.24.10 | 2.24.12 | X.2.10 | |

25 Rursus si dominae.
26 Item si delator.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| | **V1** | **V2** |
|---|---|---|
| | *Si de feudo vasallus ab aliquo interpellatus fuerit et dominus eum defendere noluerit* | |
| *Negotium tale est* | 2.25 | 2.25 |
| | *Si de feudo controversia fuerit* | *Si de feudo defuncti contentio sit inter dominum et agnatos vasalli* |
| *Si de feudo defuncti militis* | 2.26pr. | 2.26pr. |
| *Inter filiam defuncti* | 2.26.1 | 2.26.1 |
| *Defuncto milite* | 2.26.2 | 2.26.2 |
| *Moribus receptum est* | 2.26.3 | 2.26.3 |
| *Vasallus, si feudum partemve feudi* | 2.26.4 | 2.26.4 |
| *Si quis per triginta annos* | 2.26.5 | 2.26.5 |
| *Qui clericus efficitur* | 2.26.6 | 2.26.6 |
| *Etsi vasallus omni anno* | 2.26.7 | 2.26.7 |
| *Omnes filii eius, qui feudum* | 2.26.8 | 2.26.8 |
| *Adoptivus filius* | 2.26.9 | 2.26.9 |
| *Mulier habens feudum* | 2.26.10 | 2.26.10 |
| *Naturales filii* | 2.26.11 | 2.26.11 |
| *Si minori datum fuerit feudum* | 2.26.12 | 2.26.12 |
| *Si quis decesserit impubere* | 2.26.13 | 2.26.13 |
| *Titius, filios masculos* | 2.26.14 | 2.26.14 |
| *Si facta de feudo investitura* | 2.26.15 | 2.26.15 |
| *Filii nati ex ea uxore* | 2.26.16 | 2.26.16 |
| *Licet vasallus domino* | 2.26.17 | 2.26.17 |
| *Si vasallus culpam committat* | 2.26.18 | 2.26.18 |
| *In generali alienatione* | 2.26.19 | 2.26.19 |
| *Si vasallus feudum alienaverit* | 2.26.20 | 2.26.20 |
| *Vasallus feudum, quod sciens* | 2.26.21 | 2.26.21 |
| *Beneficium a vasallo* | 2.26.22 | 2.26.22 |

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| | V1 | V2 |
|---|---|---|
| *Si vasallus de feudo suo agat* | 2.26.23 | 2.26.23[27] |
| *Domino committente feloniam* | 2.26.24 | 2.26.24 |
| *Feudum ea lege datum* | 2.26.25 | 2.26.25 |
| *Titius cum Sempronio fratre* | 2.26.26 | 2.26.26 |
| | *De pace tenenda et eius violatoribus* | |
| *Fredericus Dei gratia* | 2.27 (*intitulatio*) | 2.27 (*intitulatio*) |
| *Quoniam divina* | 2.27pr. | 2.27pr. |
| *Si quis hominem* | 2.27.1 | 2.27.1 |
| *Si vero violator pacis* | 2.27.2 | id. |
| *Si quis alium infra pacis* | 2.27.3 | 2.27.2 |
| *Si quis aliquem ceperit* | 2.27.4 | 2.27.3 |
| *Si vero temerarius* | id. | 2.27.4 |
| *Quicunque iudici suo* | 2.27.5 | id. |
| *Si clericus de pace violata* | 2.27.6 | 2.27.5 |
| *Si iudex clamore populi* | 2.27.7 | 2.27.6 |
| *Si duo homines pro uno* | 2.27.8 | 2.27.7 |
| *Si tres vel plures contendunt* | 2.27.9 | 2.27.8 |
| *Si rusticus militem* | 2.27.10 | 2.27.9 |
| *Si miles rusticum* | id. | 2.27.10 |
| *Post natale(m)* | 2.27.11 | 2.27.10bis |
| *Si quis rusticus arma* | 2.27.12 | 2.27.11 |
| *Mercator negotiandi causa* | 2.27.13 | 2.27.12 |
| *Nemo retia* | 2.27.14 | 2.27.13 |
| *Ad palatium comitis* | 2.27.15 | 2.27.14 |
| *Publici latrones* | 2.27.16 | 2.27.15 |
| *Quicunque advocatiam* | 2.27.17 | 2.27.16 |
| *Si quis quinque solidos* | 2.27.18 | 2.27.17 |

27 Si vasallus de beneficio suo agat.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| | **V1** | **V2** |
|---|---|---|
| *Si ministeriales alicuius* | 2.27.19 | 2.27.18 |
| *Quicunque per terram* | 2.27.20 | 2.27.19 |
| | *Hic finitur lex. Deinde consuetudines regni incipiunt* | *Hic finitur lex. Incipiunt consuetudines regni* |
| *Domino guerram facienti* | 2.28pr. | 2.28pr. |
| *Ad hoc quantocunque tempore* | 2.28.1 | 2.28.1 |
| *Si vasallus in feudo aliquod* | 2.28.2 | 2.28.2 |
| *His consequenter dicitur* | 2.28.3 | 2.28.3 |
| *Contra omnes debet vasallus* | 2.28.4 | 2.28.4 |
| | *De filiis natis de matrimonio ad morganaticam contracto* | |
| *Quidam habens filium ex nobili* | 2.29 | 2.29 |
| | *De beneficio feminae* | |
| *Si femina habens beneficium* | 2.30 | 2.30[28] |
| | *Si vasallus feudo privetur, cui debeat deferri* [*cui deferatur*] | |
| *Vasalli feudum delinquentis* | 2.31 | 2.31 |
| | *Qui testes sint necessarii ad probandam novam investituram* | |
| *Sive clericus sive laicus* | 2.32 | 2.32 |
| | *De consuetudine recti feudi* | |
| *Sciendum est itaque* | 2.33pr. | 2.33pr. |
| *Inde etiam dicitur* | 2.33.1 | id. |
| *Quod autem dictum est* | id. | 2.33.1 |
| *Sacramentum non semper* | 2.33.2 | 2.33.2 |
| *In quibusdam etiam causis* | 2.33.3 | 2.33.3[29] |
| *Similiter vasallus dominum* | 2.33.4 | 2.33.4 |
| *Item si inter dominum* | 2.33.5 | 2.33.5[30] |

28 Si femina habens feudum.
29 In quibus etiam causis.
30 Si inter dominum.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| | V1 | V2 |
|---|---|---|
| | *De lege Conradi* | |
| *Lex Conradi de beneficiis* | 2.34pr. | 2.34pr. |
| *Si inter pares duos* | 2.34.1 | 2.34.1 |
| *Ex eadem lege descendit* | 2.34.2 | 2.34.2 |
| *Similiter nec vasallus* | 2.34.3 | 2.34.3 |
| *Si fuerit inter dominum* | 2.34.4 | 2.34.4 |
| | *De clerico, qui investituram facit* | |
| *Clerico investituram faciente* | 2.35 | 2.35 |
| | *An mutus vel alias imperfectus feudum amittat* | |
| *Mutus et surdus* | 2.36 | 2.36 |
| | *An ille, qui interfecerit [interfecit] fratrem domini sui, feudum amittat* | |
| *Si quis interfecerit fratrem* | 2.37pr. | 2.37pr. |
| *Non cogitur vasallus* | 2.37.1 | 2.37.1 |
| | *De vasallo, qui contra constitutionem Lotharii [regis] beneficium alienavit* | |
| *Si vasallus contra constitutionem* | 2.38 | 2.38 |
| | *De alienatione feudi paterni* | |
| *Alienatio feudi paterni* | 2.39pr. | 2.39pr. |
| *Si inter dominum et vasallum* | 2.39.1 | 2.39.1 |
| *Non est consuetudo Mediolani* | 2.39.2 | 2.39.2 |
| *Si a morte dominum* | 2.39.3 | 2.39.3 |
| | *De capitulis Conradi* | |
| *Haec sunt capitula* | 2.40pr. | 2.40pr. |
| *Praeterea ut liceat* | 2.40.1 | 2.40.1 |
| *Similiter in petendis* | 2.40.2 | 2.40.2 |
| *Et iterum [item] si clericus* | 2.40.3 | 2.40.3 |
| | *De controversia inter masculum et feminam de beneficio* | |
| *Item sciendum est* | 2.41pr. | 2.41pr. |
| *Sed si inter dominum* | 2.41.1 | 2.41.1 |

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| | V1 | V2 |
|---|---|---|
| | *De controversia inter dominum et emptorem* | |
| *Item si sit inter dominum* | 2.42pr. | 2.41.2 |
| | | *De controversia inter dominum et emptorem feudi* |
| *Domino cum emptore feudi* | 2.42.1 | 2.42pr. |
| *Quo restituto* | id. | 2.42.1 |
| *Quod dicitur alienatione* | 2.42.2 | id. |
| | *De controversia inter vasallum et alium de beneficio* | |
| *Si controversia inter vasallum* | 2.43 | 2.43 |
| | *Quid iuris, si post alienationem feudi vasallus id recuperet* [*recuperaverit*] | |
| *Praeterea si vasallus* | 2.44pr. | 2.44pr. |
| *Profecto si domini* | 2.44.1 | 2.44.1 |
| | *An agnatus vel filius defuncti repudiata hereditate feudum retinere possit*[31] | |
| *Si contigerit, vasallum* | 2.45 | 2.45 |
| | *An apud iudicem vel dominum quaestio feudi debeat terminari* | |
| *Ex eo, quod supra diximus* | 2.46 | 2.46 |
| | *Qualiter dominus proprietate* [*feudi*] *privetur* | |
| *Ex facto quaesitum scio* | 2.47 | 2.47 |
| | *De feudo non habente propriam feudi naturam* | |
| *Si quis ea lege* | 2.48 | 2.48 |
| | *De eo, qui fecit finem agnato de feudo paterno* | |
| *Tres erant agnati* | 2.49 | 2.49 |
| | *De natura successionis feudi* | |
| *Successionis feudi talis est natura* | 2.50 | 2.50 |
| | *De capitaneo, qui curiam vendidit, an intelligatur feudum vendidisse* | |
| *Quidam capitaneus* | 2.51pr. | 2.51pr. |

31 *V2* An agnatus vel filius defuncti possit retinere feudum repudiata hereditate.

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| | **V1** | **V2** |
|---|---|---|
| *Quaesitum scio* [*Quaesitum est*] | 2.51.1 | 2.51.1 |
| *Si vasallus voluerit dominum* | 2.51.2 | 2.51.2 |
| *Similiter si quis investitus* | 2.51.3 | 2.51.3 |
| *Filius non potest* | 2.51.4 | 2.51.4 |
| *Si contentio fuerit* | 2.51.5 | 2.51.5 |
| *Similiter feudum datum* | 2.51.6 | 2.51.6 |
| | *De prohibita feudi alienatione per Lotharium* | |
| *Lotharius divina favente* | 2.52.1 (*intitulatio*) | 2.52.1 (*intitulatio*) |
| *Imperialis benevolentiae* | 2.52.1 | 2.52.1 |
| *Si quis vero contra* | 2.52.1.1 | 2.52.1.1 |
| *Imperator Lotharius Aug*(*ustus*) | 2.52.2 (*intitulatio*) | 2.52.2 (*intitulatio*) |
| *Satis bene dispositum* | 2.52.2 | 2.52.2 |
| *Imperator Lotharius etc.* | 2.52.3 (*intitulatio*) | 2.52.3 (*intitulatio*) |
| *Quoniam inter dominum* | 2.52.3 | 2.52.3 |
| | *De pace iuramento firmanda, servanda, tuenda et vindicanda et de poena iudicibus apposita, qui eam vindicare et iustitiam facere neglexerint* | *De pace tenenda inter subditos, et iuramento firmanda, et vindicanda, et de poena iudicibus apposita, qui eam vindicare et iustitiam facere neglexerint* |
| *Fridericus, Dei gratia* | 2.53 (*intitulatio*) | 2.53 (*intitulatio*) |
| *Hac edictali lege* | 2.53pr. | 2.53pr. |
| *Si quis vero temerario ausu* | 2.53.1 | 2.53.1 |
| *Iniuria seu furtum* | 2.53.2 | 2.53.2 |
| *Homicidium quoque* | 2.53.3 | 2.53.3 |
| *Iudices vero et locorum defensores* | 2.53.4 | 2.53.4 |
| *Qui vero ad praedictam poenam* | 2.53.5 | 2.53.5 |
| *Conventicula*(*s*) *quoque* | 2.53.6 | 2.53.6 |

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| | **V1** | **V2** |
|---|---|---|
| *Episcopos quoque* [*Episcopus*] | 2.53.7 | 2.53.7 |
| *Receptatoribus etiam* | 2.53.8 | 2.53.8 |
| *Illicitas etiam exactiones* | 2.53.9 | 2.53.9 |
| *Item sacramenta puberum* | 2.53.10 | 2.53.10 |
| | | *De allodiis* |
| *Ad hoc, qui allodium* | 2.53.11 | 2.54pr. |
| *Si vero contigerit, allodium* | 2.53.12 | 2.54.1 |
| *Ut autem aequitas* | 2.53.13 | 2.54.2 |
| | *De prohibita feudi alienatione per Fredericum* | |
| *Idem Augustus* | 2.54 (*intitulatio*) | 2.55 (*intitulatio*) |
| *Imperialem decet sollertiam* | 2.54pr. | 2.55pr. |
| *Callidis insuper machinationibus* | 2.54.1 | 2.55.1 |
| *Praeterea, si quis infeudatus* | 2.54.2 | 2.55.2 |
| *Firmiter etiam statuimus* | 2.54.3 | 2.55.3 |
| *Praeterea ducatus* | 2.54.4 | 2.55.4 |
| *Insuper si filius vasalli* | 2.54.5 | 2.55.5 |
| *Illud quoque praecipimus* | 2.54.6 | 2.55.6 |
| *Praeterea, si inter duos* | 2.54.7 | 2.55.7 |
| *Illud quoque sancimus* | 2.54.8 | 2.55.8 |
| | *Quae sint regaliae* | |
| *Imp(erator) Fridericus.* | 2.55 (*intitulatio*) | 2.56 (*intitulatio*) |
| *Regalia sunt arimanniae* | 2.55 | 2.56 |
| | *Quot testes sint necessarii ad probandam feudi ingratitudinem* | |
| *Imp(erator) Henricus* | 2.56 (*intitulatio*) | 2.57 (*intitulatio*) |
| *Si vasallus inhonestis factis* | 2.56 | 2.57 |
| | *De notis feudorum* | |
| *Notandum est in feudo* | 2.57pr. | 2.58pr. |
| *Quod autem pares* | 2.57.1 | 2.58.1 |
| *Item sciendum est* | 2.57.2 | 2.58.2 |

TABLE 1 Synoptic table of the rubrication in V1, V2, and Ant. (*cont.*)

| | **V1** | **V2** |
|---|---|---|
| *Idcirco pares* | 2.57.3 | id. |
| *Si instrumentum* | 2.57.4 | 2.58.3 |
| *Notandum est, quod de omni* | 2.57.5 | 2.58.4 |
| *Cum datur domino defensio* | 2.57.6 | 2.58.5 |

# Glossary

**Arimannia** (from Germ. *Heer*—army and *Mann*—man). In early medieval Lombard Italy, *arimannia* was the class of *arimanni*, the free armed men who took part in public gatherings and were subject only to the king. *Arimannia* came to be identified with the public tax paid by the *arimanni*. In the high Middle Ages, the levy of this tax was no longer a prerogative of royal power, as in many areas it had been granted to noblemen linked, whether directly or indirectly, to public powers.

**Breve testatum** a certified charter, which possesses legal validity because it has been drawn up by a notary public, abiding by all due formalities. The LF focus in particular on the various circumstances in which a *breve testatum* could be used as valid proof of investiture (1.2.1; 1.3pr.; 1.4; 2.2; 2.32; App. 1, ch. 16, 20).

**Capitaneus** (from Lat. *caput, capitis*—head). In several regions of northern Italy, c. 1000–1200, *capitaneus* was a title reserved for the first tier of the military aristocracy, characterised by a direct tie with marquesses, counts, archbishops, or bishops, from whom they often held benefices: *La vassallità maggiore del Regno Italico. I* capitanei *nei secoli XI–XII*, ed. Andrea Castagnetti (Roma: Viella, 2001). In Milan, the term applied to followers and direct fief-holders of the archbishop, one of the great nobles in the Kingdom. The LF (1.1, 1.7, 1.16, 2.10) suggest that only the king's direct tenants were originally called *capitanei*, while their followers were called greater *valvasores* (see *valvasor*) and that only later the latter came to be called *capitanei*, and, subsequently, the second-tier military aristocrats to be called *valvasores*. Moreover, LF 2.10 suggests that the 'new' *capitanei*, in Milan, were holders of a *plebs* (see *plebs*), i.e. an ecclesiastical district, stressing their connection with archepiscopal power.

**Clientulus** (lit. a petty dependant). One of the several terms (*vasallus*, *fidelis*, *miles*) used to describe fief-holders. Its use seems to reveal an early influence of Roman law notions of patronage; the analogy between vassals and 'clientuli' is indeed stressed by Ardizone c. 1230–1240 (*Summa feudorum*, f. 3rb), who described the *clientulus*, a domestic servant, as the only clear similarity with vassals he could draw from the Corpus Iuris Civilis. In the LF, the term occurs only in tract B (LF 1.7–12), dating from the early twelfth century—the same tract also utilises *fidelis* as a synonym of vassal (see *fidelis*) and provides the uncommon meaning of *religio* as 'individual oath' (see *religio*). The term *clientulus* seems to stress the vertical nature of the feudal bond, by depicting the fief-holder as a humble client.

**Consultum** a marital pledge that is given to a wife which had the same value as her dowry, so as to secure the wealth brought to the household by her family: *Le pergamene della canonica di S. Ambrogio nel secolo XII. Le prepositure di Alberto di S. Giorgio, Lanterio Castiglioni, Satrapa* (*1152–1178*), ed. Annamaria Ambrosioni

(Milano: Vita e Pensiero, 1974), docc. 40, 57, 60. The term reflects local Lombard usage: in the 1216 book of customs of Milan, the verb *consultare* bears the peculiar meaning of 'exchange': *Liber consuetudinum Mediolani*, ed. Enrico Besta (Milan: Giuffrè, 1949), 124 (ch. 25.13–15).

**Curia** (often as a synonym of *curtis*): a polysemic word that in the LF is used to indicate (1) a lord's entourage or council; (2) a tribunal—e.g. *curia Mediolanensis*, the court of Milan; (3) a rural district. Concerning the last meaning, a *curia* was generally comprised of a village, agricultural land, commons such as pastures and woods, and, usually but not necessarily, a signorial house.

**Curtis** (often as a synonym of *curia*): a polysemic word, that in the LF indicates (1) a lord's entourage or council—i.e. *pares curtis* or *curiae*, the peers of a lord's court; (2) a rural district, or manor; according to the Carolingian manorial system, a *curtis* was ideally divided into a signorial demesne and land parcelled into farms (see *mansus*) allotted to tenants. In the high Middle Ages, this meaning had become obsolete.

**Defensio** in the LF, the term defines defence by oath, or compurgation, through which one party could establish its innocence or conclude a dispute. In some circumstances, this oath had to be confirmed by oath-helpers (*sacramentales*), generally twelve. Whilst this meaning seems unusual, references to the *Lombarda* (Lomb. 2.55.32 or 35) in LF 2.57.3 make explicit the connection between *defensio* and oath-helping.

**Dominus** in the LF the term generally indicates a lord or, more precisely, the grantor of a fief; however, in some instances, it can be intended as 'owner' (most notably, in LF 2.8.1). The distinction between the two meanings is sometimes very slight and points at the interpenetration of political power and ownership of land in the high Middle Ages.

**Dominus plebis** (see *plebs*): someone to whom a 'plebs' has been assigned or enfeoffed.

**Feudum de camera** a fief consisting of a sum of money paid annually out of a lord's treasury.

**Feudum de caneva** a fief consisting of a fixed quantity of products paid annually out of a lord's warehouse.

**Fidelis** (see *fidelitas*): a polysemic term describing (1) a believer, or, in the plural form *fideles*, the community of the faithful; (2) any person bound by an oath of allegiance; (3) more precisely, a person bound by an oath of fealty to a lord (*dominus*) from whom he holds a fief, hence a 'sworn vassal'.

**Fidelitas** (see *fidelis*): fealty, and by extension, an oath of fealty; this oath could be an oath of allegiance to a lord or ruler or, in a stricter sense, an oath sworn in return for the grant of a fief.

**Fodrum** in the early Middle Ages, fodder that the subjects of the kingdom were bound to provide to the king and public officers while fulfilling their duties; from the eleventh century it became a pecuniary taxation levied for the same reason.

The imperial 'fodrum' was levied when the emperor, or emperor to-be, organised an expedition in the Kingdom of Italy.

**Gastaldus** In early medieval Italy, the office of 'gastaldus' concerned the administration of portions of the Lombard king's demesne. In high medieval Italy, it referred to the administrator of a lord's estate (or *curtis*/*curia*), a synonym of *villicus* (see App. 1, ch. 9).

**Laudamentum** (see *laudare*): a collective statement which, according to the context in which it was given, could be an official approval or declaration concerning matters discussed at a public assembly, such as a signorial court, a civic council, or an imperial diet; or a collective ruling provided by a judging panel to decide an arbitration or a court case.

**Laudare** (see *laudamentum*): to provide a collective approval or declaration, or to deliver a collective legal decision. The verb *laudare* often pairs with *confirmare* in the end of disputes, when a panel of judicial authorities, like the peers of a signorial court or the officials of a civic government, were asked to ratify a judgment usually delivered by a member of that same panel.

**Mansus** (from Lat. *manere*—to remain, to dwell): a farm, usually comprised of a house, parcels of agricultural land, and shares of commons in the surrounding areas. According to the manorial system, a *mansus* (or, in earlier Italian sources, *massaricia*) was the basic cell of land exploitation, framed in *curtes* (see *curtis*) and allotted to a family (see LF 1.4.6).

**Miles** a knight. In the LF, the term indicates a fief-holder of noble status whose fief was protected under the custom of fiefs.

**Plebs** a baptismal church on which other suffragan parish churches depended; by extension, an ecclesiastical district centred on a baptismal church, which included several parish churches.

**Populus** (1) the people, a community of people; (2) in high medieval Italy, the community of free adult males who took part in the civic assembly of a communal city.

**Precaria** (from Lat. *precari*—to pray, implore): a precarial grant. In the early and high Middle Ages, a conveyance of land granted for a fixed time in exchange for rent, on acceptance of a request addressed in the form of a prayer, stressing the asymmetrical nature of the grant. Medieval *precariae* were different from the ancient Roman *precarium* grant in that the latter was granted indefinitely, revocably, and free of charge.

**Praescriptio** prescription, the extinction of a right that is not exercised for a time determined by law, usually thirty years. Conversely, the acquisition of a right over a moveable or immoveable property by undisturbed possession for a determined lapse of time, usually thirty years (acquisitive prescription).

**Religio** besides the more obvious meaning of 'religion', in the LF (1.10) the term has the unusual meaning of 'individual oath', as opposed to oaths supported by twelve oath-helpers. This utilisation might reveal, as perhaps with the term 'clientulus',

also appearing only in tract B, the author's acquaintance with notions derived from Roman law, in this case the oath described as 'religio sacramenti' (e.g., C. 2.56.4, concerning the function of oaths in arbitrations; C. 2.42.3, concerning oaths of minors). The same expression was used in a theological treatise produced in northern Italy in 1086: Wido Episcopus Ferrariensis, *De scismate Hildebrandi. Pro illo et contra illum*, ed. Georgius Heinricus Pertz (MGH, Scriptorum, t. xii; Hannover, 1856), 148–179, at 159 and 179.

**Usus curialis** (Lit. the usage of a *curia*, or the usage of *curiales*). This expression occurs only in two of the *Capitula extraordinaria* (App. 1, ch. 27; App. 2, ch. 7) to describe a privileged usage in respect to the content of those chapters. The adjective *curialis* derives from the polysemic word *curia* (see above, *curia*), of which it retains the ambiguities. In high medieval Italy, e.g. Guastalla, Luni, and Massa, *curiales* were knights who held 'honourable' fiefs inclusive of jurisdictional rights—one might say petty lordships: Andrea Castagnetti, *Regno, signoria vescovile, arimanni e vassalli nella Saccisica dalla tarda età longobarda all'età comunale* (Verona: Libreria universitaria editrice, 1997), 199–203; Mario Nobili, 'Per lo studio della "società feudale" lunigianese: "milites", "castellani" e vassalli nei secoli XI–XIII', *Archivio Storico Italiano*, 165 (2007/3), 423–448, at 433 and footnote 34. In Verona, where Ardizone collected the *capitula extraordinaria*, *curiales* were noble fief-holders of local churches who resided in the area of the city's castle: A. Castagnetti, 'Da Verona a Ravenna per Vicenza, Padova, Trento e Ferrara', in *La vassallità maggiore*, 347–491, at 369–371. It is worth noting that *curialis* might be a learned quotation referring to the Roman magistrates called *decuriones* (*DuCange*, ii, col. 670[a]–[b]), to whom Ardizone devoted a *summa* published in: Azo, *Summa super Codice* (Papiae: per Bernardino et Ambrosius de Rovellis, 1506; repr. Turin, 1966), 412–455.

**Utiliter** (Lit. 'usefully'): an adverb referring to a category of legal actions termed *utiles*. In Roman law, *actiones utiles* were actions used in situations that were not covered by existing law and, therefore, they had to be devised by analogy (i.e., 'usefully') with the actions defined and recognised by the law, which were called *actiones directae*. In the LF *utiliter* appears in 2.43 with regard to the legal position of fief-holders, for whom the *Corpus Iuris Civilis* did not provide any rule; therefore, a fief-holder was allowed to 'vindicate' (see *vindicare*), that is to say, to bring a legal action called *rei vindicatio utilis* to recover possession of the fief, as if he were its owner—who on the other hand could bring a *rei vindicatio directa*. For an insightful overview of these issues in the LF, see: J. Chorus, '*Investitura proprie dicitur possessio*. Some remarks on possession in the *Libri Feudorum*', in *Le situazioni possessorie*, ed. Letizia Vacca (Naples: Jovene, 2018), 87–116.

**Valvasor** (prob. from *vassus vassorum* = 'vassal of vassals') (see *capitaneus*, also for the different uses of the term). In several regions of high medieval Italy, a title for

the second tier of the military aristocracy, below *capitanei*. In the LF it is often stated or implied that Lombard *valvasores* held fiefs from *capitanei*.

**Vindicare** (1) to enforce, to avenge; (2) to claim. With regard to this second meaning, the term may acquire a more precise legal connotation, referring to the Roman law action called *rei vindicatio*, available to owners to claim their property. This technical meaning emerges in 2.8.1, where a distinction is implied between this *rei vindicatio* and a *quasi rei vindicatio* (the text is *quasi vindicare*), which is available to those who were not, in the strictest sense, owners.

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# Index to Chapters 1–4

# Index to the *Libri Feudorum* and the Appendices

This index is based on the English text of the *Libri Feudorum* and Appendices 1–3. If relevant, the Latin text is reported in square brackets; it is omitted in the entries concerning broad subjects, such as 'kinship' or 'disputes'. Most references are to couples of pages, redirecting to occurrences in the Latin (even pages) and English (odd pages) texts. Some references report non-consecutive pages, e.g. 222–225: in these cases, the pagination has split the text and the Latin word is on the even page, the corresponding English translation on the odd one.

# Index to Legal Sources

### Imperial and Royal Legislation Collected in the *Libri Feudorum* and the Appendices



### Texts From the *Decretum Gratiani* Collected in the *Libri Feudorum* and the *Capitula extraordinaria*[1]



### References to Legal Sources



1 Apart from LF 2.6 all the excerpts are unreferenced.

## Implicit or Unreferenced Quotations

# Index to Manuscripts

The *Libri Feudorum* (the 'books of fiefs') are the earliest written body of feudal customs in Europe, codified in northern Italy c.1100-1250, which gave rise to feudal law as a branch of civil law. Their role in shaping modern ideas of feudalism has aroused an intense debate among medievalists, leading to deep re-thinking of the 'feudal' vocabulary and categories. This book offers an up-to-date English translation with a working Latin text introduced by a historical and historiographical overview of the *Libri*, thereby providing a valuable tool to understanding the long-standing importance of this collection over nine centuries of European history.

**Attilio Stella**, Ph.D. (2014, Università di Trento), is a researcher at the Università di Verona. He has been research fellow at the University of St Andrews, Tel Aviv University and ENS Paris. He has published several articles and book chapters on feudal law and lordship in medieval Italy and France.

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